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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9769.

CENTRAL ROIG REFINING COMPANY and WESTERN SUGAR REFINING COMPANY, *Appellants*,

v.

SECRETARY OF AGRICULTURE, *Appellee*,

and

PORTO RICAN AMERICAN SUGAR REFINERY, INC., *Intervenor*,

and

THE AMERICAN SUGAR REFINING COMPANY, GODCHAUX SUGARS, INC., HENDERSON SUGAR REFINERY, INC., IMPERIAL SUGAR COMPANY, INLAND SUGAR COMPANY, THE NATIONAL SUGAR REFINING COMPANY, REFINED SYRUPS AND SUGARS, INC., REVERE SUGAR REFINERY, SAVANNAH SUGAR REFINING CORPORATION, and WESTERN SUGAR REFINERY, *Intervenors*.

Appeal From an Order of the Secretary of Agriculture and Petition to Review the Order.

JOINT APPENDIX.

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1 **EXCERPTS FROM TESTIMONY AND PROCEEDINGS**

December 18-19, 1947

BEFORE:

Glen J. Gifford, Hearing Examiner.

APPEARANCES:

John C. Bagwell, Head Attorney, Office of the Solicitor, U. S. Department of Agriculture, Washington, D. C., counsel for Representative of Department of Agriculture.

Arthur L. Quinn, 1625 K Street, Northwest, Washington, D. C., Co-counsel Porto Rican American Sugar Refinery, Inc.

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Frederic P. Lee, 1200 18th Street, Northwest, Washington, D. C., attorney for Central Roig Refining Company of Humacas, Puerto Rico.

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2 C. Keating Bowie, Jr., 909 Mercantile Trust Building, Baltimore 2, Maryland, Attorney for Eastern Sugar Associates (a trust).

J. B. Garcia-Mendez, San Juan, Puerto Rico, Attorney for Igualdad-Western, of Mayaguez, Puerto Rico.

PROCEEDINGS

* * * * * * * * * * *

15 **Chester E. Davis** was called as a witness and, having been first duly sworn, was examined and testified as follows:

The Witness: May I proceed, sir?

Presiding Officer Gifford: Go ahead and give your name and representation first.

The Witness: Mr. Presiding Officer, my name is Chester E. Davis. I am employed by the Sugar Branch, Production and Marketing Administration, U. S. Department of Agriculture.

* * * * * * * * *

The Witness: Direct consumption sugar is of three kinds: (1) refined, (2) turbinado (semi-refined), (3) raw sugar for direct consumption, that is, raw sugar brought in by the tobacco trade and other industries using raw sugar in the manufacture of their products.

* * * * * * * * *

As against the maximum quantity of 126,033 short tons of direct-consumption sugar which may be brought in from Puerto Rico during the calendar year 1948, the potential capacity to produce this type of sugar is equal to approximately 484,982 short tons as shown by a recent survey made by the Production and Marketing Administration field office in Puerto Rico in October of this year.

A table showing the 1947 refinery capacity for each individual refiner is herewith submitted for the record. [See Exhibit 4]

* * * * * * * * *

The Witness: Although Puerto Rican refiners annually distribute for local consumption from 75 to 90 thousand short tons of refined or turbinado sugar, this amount, together with the direct-consumption quota of 126,033 short tons which may be shipped to the United States during a calendar year, is well under the capacity of the refineries.

Thus, it may be logically assumed that without the establishment of marketing allotments disorderly marketing of Puerto Rican direct-consumption sugar in the continental United States would result and some refiners would be deprived of their right to market a fair and equitable share of the direct-consumption quota.

In regard to the manner in which allotments should be made, the first standard stated in Section 205(a) of the Act, namely, the processings of sugar to which proportionate shares, established under the Act, pertain, is inapplicable to the allotment of that portion of the quota which may be filled by direct-consumption sugar.

This conclusion is based upon the following circumstances:

1. The great majority of the producers in Puerto Rico who process sugarcane to which proportionate shares pertain do not produce direct-consumption sugar, and

2. Some of the refiners who produce direct-consumption sugar do not process sugarcane to which proportionate shares pertain, but purchase raw sugar for their operations.

Therefore, it is concluded that a fair, efficient, and equitable distribution of the direct-consumption portion of the quota could not reasonably result from the utilization of this standard.

Therefore, the Department's proposal is that the 126,033 short tons of sugar, raw value, be allotted on the basis of the other two standards, namely, "past marketings" and "ability to market" such sugar.

Equal weight is given to each of these standards. It is proposed to measure "past marketings" by using each refiner's average deliveries of such sugar during the period 1935-1941 and to measure "ability to market" on the basis of the highest one-year deliveries of direct-consumption sugar to the continental United States by each refiner during the calendar years 1935-1947, inclusive.

* * * * * * * * * * *

The Witness: Exhibit A [to the Notice of Hearing] shows the entries of Puerto Rican refined and turbinado sugar by mills in terms of short tons of sugar, raw value, for each of the calendar years 1935 to 1947, inclusive, and was compiled from official statistics of the

Sugar Branch, Production and Marketing Administration, United States Department of Agriculture.

Exhibit B, referred to in the notice of hearing, and already incorporated in this proceeding, gives the Department's proposed formula for allotting the 1948 Puerto Rican direct-consumption quota of 126,033 short tons, raw value.

As previously stated, the proposed formula gives equal weight to "ability to market" and to "past marketings."

Inasmuch as the Sugar Act assigns no weights to
22 these factors, and in view of no compelling reason at the present time for giving greater weight to one factor than another, it is believed that equal weightings are fair and equitable for the purpose of allotting the direct-consumption portion of the Puerto Rican quota for 1948.

In determining "ability to market" we have selected as a measure the marketings of each refiner during his year of highest marketings from 1935 to 1947. This measure has been selected instead of physical plant capacity because it is believed other factors, such as availability of raw materials, location of plant, sales relationships, deliveries for local consumption, etc., would have to be combined with physical plant capacity for any realistic measure of ability.

It is acknowledged that in some years prior to the war when this same quantity of direct-consumption quota sugar was allotted, the physical capacity of the plant was one of the measures used in determining "ability to market."

However, in Puerto Rican Sugar Order No. 11, issued by the Secretary of Agriculture on June 1, 1938, published in the Federal Register for June 3, 1938, the Secretary stated, and I quote:

"In determining 'ability to market', it is apparent that mill capacity alone cannot be taken as an accurate measure.

That factor represents only a potential ability to
23 produce sugar, depending upon a number of other factors such as availability of raw sugar, the price of raw materials, transportation costs, and similar factors.

An additional factor must be used in order to arrive at a true measure of ability to market."

The Secretary then went on to state that he believed that in measuring "ability to market" each processor's current marketings of sugar should be considered and given equal weight with each processor's mill capacity.

In 1938 the Department had before it only the calendar year marketings by the various refiners for the years 1935, 1936, and 1937, upon which to judge a refiner's ability to market. At this time, however, the Department has available the total marketings in the United States for the various refiners for each of the years 1935 to 1947, inclusive.

In some of the years, for example, 1940, 1942 through 1946, and in the last four months of 1939, marketing restrictions were not imposed on the individual processors and each processor has had adequate opportunity to demonstrate by performance his "ability to market." Therefore, it is believed that the highest one-year marketing during the years 1935-1947 is a fair, efficient, and equitable measure of the processor's ability to market.

"Past marketings" are measured in the proposed
24 formula in terms of the average marketings of each refiner during the prewar period, 1935-1941. It will be noted that marketings during the war and postwar years have been excluded in measuring past marketings. Such years are deemed to be unrepresentative in view of wartime shipping difficulties, Government procurement restrictions, and other wartime dislocations.

Furthermore, none of the marketings during the war period and postwar years were made pursuant to the provisions of Title II of the Sugar Act of 1937 as such provisions were suspended by Presidential proclamation on April 13, 1942, and only recently reinstated on November 28, 1947.

The wartime years are also considered undesirable because of the wartime policy of the Department to minimize interference with the prewar competitive relationships of industries.

On the basis of the foregoing proposal for 1948, it is recognized that provision is not made for the establishment of a marketing allotment for a new refiner.

However, the information available to the Department indicates that new refiners are not contemplating entering the field in 1948. The present proposed allotment is for the calendar year 1948 only and if in future years any refiner in Puerto Rico, new or old, who is without participa-
25 tion in the United States market, decides to enter the market, his request for participation in the quota in future years will, of course, be given very careful and appropriate consideration in accordance with the provisions of Section 205(a) of the Sugar Act of 1948.

* * * * * * * * * *

26 Cross Examination

By Mr. Quinn:

Q. Mr. Davis, on Exhibit 4 I would like to direct your attention to the title "Refinery Capacity". The calculations made in that Exhibit are on a five-day run, are they not? A. That is correct, sir.

Q. Will you kindly tell me why a five-day run was selected? A. We requested the head of the Puerto Rican Office of the Production and Marketing Administration to contact all of the companies, refineries, interested, and make a check—this was in October of this year—and make a check of the potential refining ability during any of the best five days in 1947 with which we could compare and be comparable in the same manner in which the ability to produce was established in the year 1938 when the five consecutive days of any ten days were used in trying to arrive at a refinery capacity.

* * * * * * * * * *

27 By Mr. Lee:

Q. Mr. Davis, do you have available figures as to the amounts of direct consumption sugar permitted to be

marketed in the continental United States, by each of the refiners listed in the hearing notice, during the years 1938 to 1947?

I recognize in asking the question that there were some years when there were no restrictions and some years when restrictions were not imposed under the Sugar Act but under other authority of the Government. A. As per your request to Mr. Bagwell yesterday, I hurriedly put together a table [Exhibit 5] showing the quantities of Puerto Rican direct consumption sugar entered into the continental United States by individual refiners, 1938-1947, and opposite those figures, the quantities alloted each refiner under applicable regulations and contracts, in terms of short tons of sugar, raw value to make as many copies as we might possibly make, but I would have no objection—as you have requested this information I have no objection whatsoever to submitting this table for the record and I have here four copies. The table just referred to shows the names of the refiners, all of the years from 1935 to 1947.

For instance, under 1935, the quantity entered and the quantity alloted by Puerto Rican sugar Order No. 3. During that year, only refined sugar, not turbinado sugar was allotted.

The other figures show that except for Puerto Rican, American and Guanica, the other entries were tur-
28 binado sugar. 1936 shows the quantity entered and quantity allotted. There were no allotments of turbinado sugar for 1936. 1937 shows the quantity entered and no allotments of the D. C. quota in 1937.

1938 shows the quantity entered and the quantity allotted by Puerto Rican sugar order No. 11.

1939 shows the quantity entered and the quantity allotted by Puerto Rican Sugar Order No. 13.

1940 shows the quantity entered and no direct consumption marketing quota restrictions under the 1937 sugar Act as amended until October 15, 1940, when the Act was again amended to include direct consumption marketing quotas for Puerto Rico.

1941 shows the quantity entered and the quantity allotted by Puerto Rican Sugar Order No. 16. It will be noted that the 1941 allotments were approved by the Secretary of Agriculture, after the interested parties had mutually agreed upon the size of each company's allotment.

1942 shows the quantity entered and no individual allotments under the 1937 Act, as title 2 suspended by Presidential Proclamation April 13, 1942, suspension was lifted on November 28, 1947. Also refiners were not given individual marketing allotments of D. C. sugar under the terms of the government purchase contract.

29 1943 shows the quantity entered and no allotments under the same terms as 1942.

1944 shows the quantity entered and the reasons for no allotments were the same as in 1942.

1945 shows the quantity entered and the same reasons as given for 1942.

1946 shows the quantity entered and no allotments were made for the same reasons as in 1942—the individual processors.

1947 shows the quantity entered and the quantity allotted under the terms of the Commodity Purchase Agreement.

In note 4 there, Article II of the Purchase Agreement states:

"If applied for by sellers, the total quantity so released to all sellers shall not be less than 130,000 short tons, raw value."

• • • • • • • • • • •

By Mr. Garcia-Mendez:

30 In Exhibit 4 I find the total of 68,367 tons for the 5-day period of April 21 to 25, 1947. Do you have any figured available to show that Igualdad during any previous year had a total capacity higher than 68,367? A. I have no figures available, sir. The only figures available were those that were submitted for the hearings in 1938, 1939 and 1941, when I believe that they were lower. The refinery capacity as shown by your company, when the

allotment was under consideration in 1939, and finally issued under Puerto Rican Sugar Order No. 13, showed 66,396 tons.

Q. In examining the table showing the quantities of sugar entered into the continental United States, we find that during the year in which there was an allocation, Puerto Rican and American Sugar Refinery delivered sugar enough to take care of their allocation. How does the sugar delivered by Puerto Rican American Sugar Refinery during the years in which there was no allocation compare with the deliveries during the allocation years? Was it more or was it less, and to what extent? A. The average deliveries of the Puerto Rican American Sugar Refinery as shown by official statistics for the Sugar Branch, Production and Marketing Administration, showed that the average deliveries for the years 1935-1941 inclusive, was 100,070 short tons, and the average deliveries for the Puerto Rican American Sugar Refinery for the years 1942 to 1947, or in other words, the war and postwar years, was 57,486 short tons raw value.

Q. How do the deliveries of Igualdad Western compare during the pre-war years and during the World War years? A. The average deliveries for the years 1935 through 1941 for Igualdad, 8,127.

The average deliveries for the years 1942 through 1947, 22,025.

Q. In your testimony, Mr. Davis, you say that the Department is giving equal weight to both ability to market and past marketing, and you further state that ability to market had several different factors to be considered. Don't you think that the ability to market should be weighed by the immediate past performance, on the basis of the U. S. Sugar Order 13 of 1939, and the theory established by the U. S. Sugar Order No. 13? A. I believe that in my statement I showed the government's position as to what should be considered, taking into consideration their ability to market. As a matter of fact, Mr. Mendez, I be-

lieve, under the government's proposal, you have been given the opportunity—and there has been selected—the best year of performance of deliveries to the continental United States as the ability to market any year from 1935 through 1937.

Q. In other words, in a 13-year span? A. In a 13-year span.

* * * * * * * * * * *

32 By Mr. Lee:

Q. As I recall it, there has not been placed in the record so far the direct consumption local figures for Puerto Rico. Do you have those figures available? A. I have those figures available for all of the interested companies I believe. However, no tables have been made of them. I would have to read them if you want them incorporated in the record from the years 1937 through 1948.

* * * * * * * * * * *

36 Mr. Quinn: I would like the record to show, Mr. Examiner, that the allocations in Puerto Rico for local consumption are not made to refiners, they are made to the raw mills, whereas the allocations under Section 205 of the 1948 Act for D. C. marketings in continental United States are made to refiners or processors of direct consumption sugar.

I wanted the record to show that.

Presiding Officer Gifford: Yes. I want you to make the record so as to protect yourself in everyway possible, and I am admitting this so if the Secretary sees fit to consider it he may do so for the purpose of determining whether the parties have the ability to supply this much sugar.

* * * * * * * * * * *

Q. Will you please read those figures into the record,

* * *

* * * * * * * * * * *

38 A. Deliveries of refined and turbinado sugar for local consumption in Puerto Rico for each of the years 1937 through 1946, inclusive:

Puerto Rican American Sugar Refinery, year 1937, 11,586; 1938, 9,004; 1939, 9,256; 1940, 10,687; 1941, 11,273.

I might add that these figures are all in terms of short tons of sugar, raw value.

1942, 10,882; 1943, 16,317; 1941, 18,147; 1943, 30,119; 1946, 30,350.

Aguirre: 1937, 680; 1938, 1,098; 1939, 1,286; 1940, 1,688; 1941, 1,043; 1942, 928; 1943, 2,383; 1944, 1,191; 1943, 256; 1946, 0.

Roig-El Ejemplo: 1937, 5,030; 1938, 6,272; 1939, 3,633; 1940, 3,069; 1941, 6,765; 1942, 7,643; 1943, 10,999; 1944, 12,015; 1945, 16,453; 1946, 17,586.

Guanica: 1937, 11,791; 1938, 7,113; 1939, 7,265;
39 1940, 7,018; 1941, 7,395; 1942, 8,565; 1943, 15,298; 1944, 13,097; 1945, 14,433; 1946, 15,725.

Igualdad Western: 1937, 0; 1938, 7,038; 1939, 4,605; 1940, 4,789; 1941, 6,564; 1942, 7,961; 1943; 11,154; 1944, 10,708; 1945, 16,436; 1946, 17,648.

Camuy: 1937, 0; 1938, 0; 1939, 1,919; 1940, 2,847; 1941, 525; 1942 through 1946, 0.

San Francisco: 1937, 10; 1938, 21; 1939, 18; 1940, 1; 1941, 54; 1942, 22; 1943, 24; 1944, 176; 1945, 16; 1946, 58.

* * * * * * * * * *

40 Q. Mr. Davis, you stated that the war and post-war years were unrepresentative of the past marketings because of wartime shipping difficulties, government procurement restrictions and other wartime dislocations. Do you know of any wartime shipping difficulties in 1947 that will not exist in 1948? A. I can't say that I do.

Q. Do you know of any for 1946 that will not exist in 1948? A. I don't believe that I can answer that statement.

Q. Do you know of any government procurement restrictions that existed in 1947, and if so would it not exist equally in 1948? A. The government, under the CCC pro-

gram, purchased the crop for 1947, and pursuant to the terms of that contract set allotments of direct consumption sugar which each refiner might bring into the continental United States. To my knowledge, I know of no contemplated purchase of the 1948 sugar crop.

Q. Was total of allotments for 1947 an amount substantially the same as the total amount to be allotted for 1948? A. They were slightly in excess. They averaged approximately 131,000 tons.

41 Q. Would your answer as to 1946 and 1948 be the same? A. The entrys of 1946 equalled 121,543 short tons.

Q. Would you say that was substantially the same as the amount to be allotted—total amount to be allotted—for 1948? A. Direct to refiners, I think the record shows that it was proposed to allot 120,864 direct to refiners, and 5,169 as raw sugar unallotted for further distribution in the United States.

Q. Do you know of any wartime dislocations that existed in 1947 that would not exist in 1948? A. I don't believe I am competent to answer that question because I don't think the war was over at that time, and in 1947 there was a great deal more freedom in the movement of sugar.

Q. Perhaps you misunderstood my question. Suppose I ask it this way: Whatever wartime dislocations if any existed in 1947, have you any reason to think that the same situation would not be true in 1948? Is there any difference between the two years so far as war time dislocations are concerned? A. I know of none except the purchase by the government itself of the 1947 sugar crop and the allocation among the two refiners of the amounts that they may bring into the United States in 1947, and allocation

42 was not pursuant nor under the terms of the sugar Act of 1937 which was then in suspense.

Q. Do you know of any wartime dislocations that existed in 1946 which would not exist in 1948? A. The purchase of the entire crop by the government.

Q. Is it your considered opinion that there is substantial difference, for purposes of making allotments under the Act, between the marketing conditions in 1946 and 1947, and those that will exist in 1948? A. I think there could have been, yes, sir.

Q. Are you of the view that there are such differences? A. I repeat myself that under the terms of the Sugar Act of 1937, as amended and extended by the Sugar Act of 1948, a criterion is set forth for the Secretary to take into account in making allotments. There is nothing in the Commodity Credit Contract with the Puerto Ricans which says that the Secretary shall and must take into consideration the division of the quota in order to effectuate a fair, efficient, and equitable allotment.

Q. Mr. Davis, you have testified in Exhibit No. 5 that for the years 1942, 1943, 1944, 1945 and 1946, that there were no restrictions upon refiners marketing of direct consumption sugar to the continental United States, and no individual marketing allotments of direct consumption sugar under terms of the government purchase contract.

43 Is it your view that when there are no restrictions or no individual allotments for a year, that that year becomes unrepresentative of marketing conditions? A. Yes, I would say, as I have already stated in my presentation, that they are unrepresentative. You had the war dislocations of shipping under the control of the Navy, you had submarine warfare, you had the purchase of all the crops, both of Cuba and Puerto Rico, by the government and the allocation of those sugars, either raw or refined, where it would do the most good in the furtherance of our war effort.

Q. It is a fact, Mr. Davis, that during those years, the government encouraged the marketing of direct consumption sugar in continental United States to the fullest extent in order to meet war needs? A. I could not answer that question, sir. I don't know.

Q. Do you know of any facts, Mr. Davis, that indicate that during those years any refiner was unable to market in the continental United States all the direct consumption sugar that he had available and chose to market in that market? A. I have no figures on that.

Q. You have no facts either? A. I have no facts that I know of.

Q. Mr. Davis, you stated in your direct testimony
44 that the Secretary of Agriculture said—and you referred to the specific order I believe in which he said it—that current marketings should be considered in connection with ability to market. Am I correct in understanding that you take a position contrary to that of the Secretary and express it as your opinion that marketings, for instance, in such years as 1935—we are talking about 1948 now—marketings in such years as 1935 should be considered rather than current marketings as demonstrating ability to market? A. I am making no statement of my own, Mr. Lee. The statement that I made is the position of the Department of Agriculture, not of just Mr. Davis.

Q. That statement of the Secretary's is that current marketings should be considered. The proposal that has been set for hearing provides that instead of current marketings, that in the case of Puerto Rican American Refining Company, 1935 marketings should be taken into account. In the case of Guanica, 1939, in the case of Roig 1940, in the case of Igualdad, 1947. Obviously, 1935 and 1935 and 1940 are not current marketings. Have you any facts as to why the Department concluded in the preparation of this proposal that marketings for such years as 1935, 1939 and 1940 were demonstrative of ability to market, rather than current marketings? A. I stated that in 1938—and this
45 is the Department's position—it had before it only the calendar year marketings for the various refiners for 1935, 1936 and 1937 upon which to judge a refiner's ability to market. At this time, however, the Department has available the total marketings in the United

States for the various refiners for each of the years 1935 to 1947 inclusive, which gives a far longer period upon which the Department could judge and have the figures before them on which to base the ability to market the sugar in the continental United States.

Q. Mr. Davis, at the time of the hearing in the late fall of 1938, and the decision of the Secretary early 1939, were not also the figures of 1938 marketing available? You may want to refer to the order to refresh your recollection. A. I believe those figures were available, yes, sir.

Q. Then let me state my question again: In 1938, when there were before the Secretary, figures as to marketings for '35, '36, '37, and '38, he chose the 1938 or current marketings as a basis for demonstrating ability to market. The proposal does not choose current marketings but those for many years prior. Do you have any facts as to why the Secretary—or the Department, perhaps I should better state—now is of the view that current marketings are not demonstrative of ability to market, but was of a view in the early period, that current marketings were
46 demonstrative of ability to market? A. I find that in Puerto Rico sugar Order No. 13 issued January 5, 1939, the years 1935, 1936, 1937, and 1938, up to October 24, were used, but I might add, as again I have previously stated, it is the Department's opinion, that, having a much longer term, namely from 1935 through 1947, upon which to base, in our judgment, the ability to perform, that we consider a more adequate measure.

Q. Would you say, Mr. Davis that by October 24, 1938, substantially all the marketings for 1938 were completed? A. Approximately, yes.

Q. Mr. Davis, what facts lead you to your expressed conclusion that marketings in 1935 are a measure of ability to market 13 years later in 1948? A. From the information available to the Department, we have no information that, in this particular case, that you mentioned—Puerto Rican American Sugar Refinery—that its ability to deliver has

lessened any during the intervening years. We do consider that in taking the highest one-years from 1935 through 1947, is the more equitable manner of determining ability to market and in giving in our proposal to each refiner the highest one-year's deliveries in any of those years 1938 to 1947 inclusive some of them which were under re-
47 strictions, some of them which were without restrictions, and permitting the use of that highest year is deemed to be fair and equitable.

Q. Would your answer be the same as to the use of the year 1939 for Guanica and the year 1940 for Roig? A. Yes, sir.

Q. Mr. Davis, have you made any inquiry as to the fact as to whether there have been any changes since 1935 that might affect marketing conditions, so that 1935 would not be representative of ability to market in 1948? A. Specifically what?

Q. I merely want to know whether you had made any investigation of the facts so as to know whether any existed to show that marketing in 1935 was not the measure of ability to market in 1948? A. In October of the year 1947, we had the Puerto Rican field office check the refinery capacity which was submitted as exhibit No. 4, and which I think is self-explanatory.

* * * * * * * * * *

48 Q. Did I correctly understand you, Mr. Davis, to state that so far as you were aware, there had been no change in refining capacity since 1935? A. I did not make that statement. I said that we had submitted exhibit 4 showing 1947 refinery capacity, and in that exhibit 4, with regard to Camuy it is stated "No data received from Central Camuy on its 1947 rate of production." I have no authoritative statement to the effect that Camuy is not now acting as a refinery. I have been given to understand and I think their record of deliveries both for local consumption and for direct consumption deliveries to the United States during the past seven or eight years would

lead one to believe that they no longer exist as a refinery but the government has not yet specifically asked Camuy, "Are you or are you not a refinery any longer?"

. . . . . .

By Mr. Quinn:

Q. Isn't it a fact that title II of the 1937 Act as
49 amended was suspended during all of 1946? A. That is correct.

Q. Does the Department within your knowledge contemplate suspending Title II of the 1948 Act during the year 1948? A. That matter of suspension of Title II is a matter for the President of the United States to decide and I am afraid I can't speak for him.

Q. Mr. Davis, isn't it a fact that an emergency, proclaimed by the President in the United States in 1942, existed for all of 1946? A. That is correct.

Q. Do you contemplate, from your knowledge, any emergency for the year 1948? Can you foresee any emergency on the horizon now for the year 1948? A. You are asking me a question, Mr. Quinn, about the future. Right now, as of this moment, I can only state that to the best of my knowledge, the Department sees no emergency at this time which would cause our recommending to the President the suspension of Title II of the Sugar Act of 1948.

Q. Mr. Davis, isn't it a fact that the Commodity Credit Corporation purchased all of the 1946 Puerto Rican crop? A. That is correct, except a small quantity, I believe.

Q. Do you know whether the United States contemplates purchasing the 1948 sugar crop of Puerto Rico? A. At the present moment, as I have previously stated, it is not
50 contemplated at this moment.

Q. Mr. Davis, isn't it a fact that allocation controls were exercised by the Department of Agriculture in 1946 on all Puerto Rican refiners? A. I may not be fully qualified to make that statement—to answer that question. It is my understanding that the allocations of sugar to be

made into refined sugar for direct consumption or for local consumption, was made to the raw sugar mills who in turn sold or transferred their raw sugar rights to the various refiners, who in turn notified the selling agencies in the United States insofar as selling sugar in the continental United States is concerned.

Q. Mr. Davis, isn't it a fact that war food Order No. 63, covering the shipment of every pound of Puerto Rican sugar from Puerto Rico to continental United States was in effect for the entire calendar year 1946? * * * A. I believe it was in effect.

* * * * * * * * * *

Q. Do you contemplate any similar order for 1948,
51 Mr. Davis? A. Not that I know of.

By Mr. Antonsanti:

Q. Mr. Davis, in computing your formula for ability to market— A. I didn't understand you, sir. Will you read it again, or state your question again?

Q. In preparing your formula for ability to market, what has been the result of the application of that formula to the particular refiners now interested in this proceeding? A. I take it you want to know how much each one of them—how much it is proposed that they would get under the formula?

Q. Well, no. You have taken, in ability to market, 13 years, I believe. A. The highest one-year.

Q. The highest one-year? A. That is right.

Q. Therefore, the result of the application of that formula is that every one of the refiners here, including Roig, has obtained, by virtue of that formula, the highest production in any one year? A. The highest production, no. Highest deliveries to the continental United States.

52 Q. Therefore, the application of that formula on ability to market has resulted in your taking the figure for Roig of 28,657 short tons, raw value, is that cor-

rect, in Exhibit A? A. 28,657 short tons, raw value, that is correct.

Q. And at no other period has he produced any larger amount, or delivered for direct consumption in the United States any larger amount? A. That is correct.

Q. To make it brief, the same result as to any other refiner listed in Exhibit A? A. That is correct, although I wish to call the attention of the Presiding Officer that the footnote 1 states that for for central Aguirre and to central Igualdad Western, "These figures are subject to revision when the final 1947 outturn weight and polarization officially determined."

Q. Mr. Davis, when you go back to 1935, in one case, for the application of the formula for ability to market, and in connection with your previous testimony, would it be correct to say that you go back 13 years or would it be more correct to say that you go back 5 years into a normal period, and that you have eliminated, in one case, war years? A. In determining the ability to market we have used the entire period 1935 to 1947.

Q. I am sorry. I amend the question. In past
53 marketings substituting the word "ability to market past marketings," what would be your reply? A. We used the prewar years 1935 to 1941.

Q. Did I understand you to use the words "representative period," in connection with that from 1935 to 1941? A. In my previous statement I said, "it will be noted that marketings during the war and postwar years have been excluded in measuring past marketing. Such years are deemed to be unrepresentative, in view of the wartime shipping difficulties, government procurement restrictions, and other wartime dislocations."

Q. Consequently, the periods that you picked or selected or chose were considered by you to be representative? A. They were considered by the Department to be years which in the over-all would give a fair, efficient, and equitable distribution of of the direct consumption quota of 126,033 short tons.

Q. Would it be correct to say, or have you considered, that the period 1936 to 1941 for past marketings, was a more normal period than the period 1941 to 1947? A. There is no question about it being more normal, speaking in general terms, not necessarily with reference to this, but in all respects, those years were more normal than the war years.

Q. Has it been considered by you or the Depart-
54 ment that 1947, the first postwar year is an entirely normal year and that the country has completely recovered from the effect of the war? A. In considering, this proposal 1947 was not counted as a normal year, because of the purchase of the entire crop and the allocation outside of the terms of the Sugar Act of 1937, among the various refiners.

* * * * * * * * * *

Q. As a matter of fact, during most of 1947, the country has been considered still in a state of emergency, has it not? A. I beg your pardon, sir?

Q. As a matter of fact, during most of 1947, and particularly during the first month, the country has still been considered in a state of emergency, has it not? A. With reference to sugar and Title II of the Sugar Act, the emergency was considered to exist until by Presidential Proclamation, Title II was reinstated on November 28, 1947.

* * * * * * * * * *

55 Q. And prior to that Proclamation, your Department considered sugar an emergency product? A. That is correct.

* * * * * * * * * *

56 Q. Now, Mr. Davis, going back to the questi[illegible]on were asked by Mr. Lee, whether or not in 1938, when a hearing was being conducted in the Department to determine allocations for the forthcoming year, 1939, the
57 figures then taken into consideration were for four years prior to 1939? A. They were for three years, and from January 1 to October 24, 1938.

Q. Those figures were then taken because they were current marketing figures?

Mr. Lee: Mr. Chairman, may I interrupt, I think Mr. Antonsanti has misunderstood my question. It was that the Secretary, despite the availability of figures for 1935, 1936, 1937 and 1938, took into account only 1938 figures in ascertaining ability to market.

The Witness: May I clarify that?

It is the conclusion of the Secretary—in Puerto Rican Sugar Order No. 13, issued January 5, 1939, he stated:

"(1) Past marketings during the years 1935, 1936, 1937 and 1938, up to October 24, and (2) ability to market, measured by giving three-fourths weight to the present refining capacity determined as aforesaid," and I am quoting,

"and one-fourth weight to the quantities of direct consumption sugar received for entry into the continental United States between January 1, 1938 and October 24, 1938."

By Mr. Antonsanti:

Q. Now, may I ask you if at that time the year selected as representative was a normal year? A. I would so consider it.

58

Q. Coming now to this hearing and your present formula, your answer would not be the same if you were asked to state whether or not the last years production was normal? A. I believe it would be preferable to restate that question. You make mention of the word, "production."

Q. I mean, deliveries of distribution into the United States.

The Witness: I believe Mr. Presiding Officer, I have previously answer that statement.

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By Mr. Quinn:

Q. Mr. Davis, directing your attention to that part of the formula where you selected the highest single year, on ability to market. Of the seven companies listed, isn't it a fact that the highest single year for five of those seven fall within the years 1935 to 1940 inclusive? A. No. Four do.

Q. I will amend my question: To 1941 inclusive?

59 A. That is correct.

Q. Of the other two, Mr. Davis, specifically central Aguirre and Igualdad, what year did you select? A. 1947.

Mr. Quinn: That is all.

By Mr. Garcia-Mendez:

Q. Is it not a fact that the dislocations and shipping difficulties referred to by you during the war years were equally applicable to all refiners? A. They may or may not have been applicable to the same extent to all refiners. There is no question I believe but what during the war there were many many dislocations which affected first one and first the other, either favorable or adversely depending upon the situation at the moment.

Q. In connection with the deliveries of sugar to the continental United States, were not the shipping difficulties equally applicable to all the refiners? A. I would not be in a position to answer that question.

Q. In connection with the deliveries of sugar into continental United States, were not the government dislocating regulations equally applicable to all the refiners? A. Would you repeat that question again?

Q. Is it not a fact that the dislocations for the war years were not equally applicable to the refiners insofar as the deliveries of sugar in continental United States is

60 concerned? A. I was not in Puerto Rico during the war. To my knowledge and belief, and from information that I have received at various times, I believe the dislocations to some one refiner in reference to the other, was somewhat different, and I might say particularly so that

during the wartime period the control of shipping and allocation of vessels to take out sugar from Puerto Rico, sometimes they allocated just one port and you had to go through that port, sometimes it was another, and the location of refiners closer to San Juan at some one time or other, may have been more favorably treated than others.

Q. Is it not a fact that the Puerto Rican American Refining Company is much nearer to San Juan than Igualdad Western? * * * A. I do not know, sir.

* * * * * * * * * * *

Q. Mr. Davis, is it not a fact that during the years 1942 to 1947, the maximum delivery in anyone year by
61 Puerto Rican American Refinery was in 1947 the amount of 60,820 tons, and yet in the government proposal, Puerto Rican American Sugar Refinery is allotted the amount of 79,783 tons? A. You are right. That is the proposal.

Q. Is it not a fact that during the same period the maximum deliveries of Igualdad Western was 29,965 tons in 1947, and in the government proposal the allotment made to this refinery is only 14,026 tons, or less than 50 percent of the actual deliveries during 1947? A. That is correct.

Q. Is it not a fact that during this same period, the maximum delivery of Roig El Ejemplo was 27,246 in 1947 and in the government proposal they are alloted 15,446? A. That is correct.

Q. Do you know, Mr. Davis, of any dislocation or manufacturing difficulty which prevented either of the refiners to produce as much sugar as they had a general ability to produce during the years 1942 to 1947?

* * * * * * * * * * *

62 A. Specifically, to anyone of the refiners, my answer necessarily must be no, Mr. Presiding Officer. I think I have already mentioned in my previous testimony the general wartime dislocations and I must stand on that in my previous statement.

* * * * * * * * * * *

63 The Witness: Pardon me, just a second sir. Mr. Presiding Officer, as requested before the noon recess our office has worked up the deliveries of refined and turbinado sugar for local consumption in Puerto Rico at certain mills for January 1 through November 29, 1947 in terms of short tons of sugar, 96 degree basis. * * * For 1947, the local consumption for Puerto Rican American Sugar Refining Corporation, incorporated, was 23,384 tons, Aguirre, 30 tons, Roig Refining Company, 16,675 tons, Guanica, 14,817 tons, Igualdad Western Sugar Refining Company, 16,453 tons, San Francisco, 58 tons, total 70,417 short tons.

I would like to submit this for the record. [Exhibit 6]

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64 By Mr. Garcia-Mendez:

Q. Mr. Davis, is it or is it not a fact that the ports where Puerto Rico American Refineries are located are better port facilities than, Mayaguez, where Igualdad Western is located? A. From personal inspection I can not answer either yes or no. It is my understanding that the facilities at Ponce, as it refers to the Puerto Rican American Refinery, are very good. I can not speak for Mayaguez.

Q. Do you think that it would be a fair and equitable flow of sugar that some sugar refiners under the proposed formula to have to ship their raw sugar to continental United States while others would have to go to other points —distant points—in Puerto Rico to get raw sugar to refine in their refineries? A. Would you repeat that statement again, sir?

Q. Do you think that it is a fair and equitable flow of sugar, the fact that under the proposed formula, some of the sugar refiners will have to ship some of their raw sugar to continental United States, while Puerto Rican American will have to go to eastern points in Puerto Rico to buy raw sugar to refine? A. I think, sir, your question

65 is irrelevant to the proposal submitted herein and

for the allocation of the direct consumption of quotas for distribution in the United States. That is a matter of internal—that is your internal problem there.

Q. Still, don't you think that it is contrary to an equitable flow? A. Not necessarily.

Q. Why? A. It is a question of price probably. Isn't that something that they can decide among themselves in their fiscal policy as to what they wanted to do and what they do not want to do?

Q. Would it not affect the fair flow of the sugar? A. I don't believe it would.

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By Mr. Bagwell:

Q. Mr. Davis, you have presented here today a proposed method of allotment. Would you state for the record whether this proposal was worked out by yourself or whether it was worked out by you in conjunction with other officials in the Department. A. It was worked out by me in conjunction with other officials of the Sugar Branch in the Department of Agriculture.

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Q. Did those officials include the director of the Sugar Branch and the Administrator of the Production and Marketing Administration? A. It included the Director of the Sugar Branch.

Q. And also the Director of the Production and Marketing Administration. A. Yes, sir.

Q. In measuring ability to market, you have testified that you took into account both refining capacity and shipments to the continental United States during specified years.

Did you consider any other factors which might be used as a measure of ability? A. In which years?

Q. In this particular proposal here. A. Would you mind repeating that question again, sir?

Q. I understood you to testify this morning that it was possible to measure ability to market in one of two ways:

either by taking the refining capacity of the plant or else by taking actual performance as indicated by the shipments of sugar to the continental United States. I was
67 asking whether any other basis was considered by the Department than those two? A. No.

Q. Do you consider actual performance or shipments during a particular period of time as a better indication of ability to market than mere refining capacity of the mill? A. As previously stated in my presentation, the Department feels that the marketings over a representative number of years—in this case, the 13 years—is more representative than the actual physical mill capacity.

Q. In measuring ability I noticed that you took the best year of performance during the period 1935 to 1947 inclusive, is that correct? A. That is correct.

Q. This period covered both peacetime and wartime years. Would you say that the shipments of an individual company during the war years, despite war dislocations and so on which you discussed this morning, would be an indication of ability to market for that particular company? A. I think it would.

Q. Do you feel that the fact that a particular company did not market as much sugar, or ship as much sugar, to the continental United States during the war years as it did during the pre-war period, might indicate that war years was not a good indication of the ability of that company to ship sugar? A. In particular instances, it
68 may have been an indication of their inability to ship as much sugar as they may have previously. On the contrary, some companies may have, during the war years, shipped and entered into the United States more sugar than they did in the prewar period, and it is the Department's feeling that if they have shown that ability, that it should be counted in determining their ability to market. Therefore, we have taken from the year 1935 through 1947.

Q. You had before you, when you did this, the present refining capacity of the various mills? A. Yes.

Q. Did you find, in going over those figures, that there had been any change in the refining capacity, although there may have been a substantial change in actual marketings, comparing prewar and war years? A. There was some change in 1947, as compared to 1939, when considered on the same comparable basis of taking five consecutive days run out of the best ten during the period '39 or '47, and the Puerto Rican American Sugar Refinery, in 1939, was 207,195. In 1947 it was considered to be 196,920 tons.

Q. Now, assuming—

The Witness: Excuse me, sir. I might as well get those in. At Aguirre 1939, 13,765; 1947, 30,350. Central
69 Guanica, 34,956 in '39; 1947, 52,896. Central Igualdad, 66,396 in '39, 68,367 in 1947. Central Roig, 60,201 in 1939, 110,556 in 1947. Central San Francisco 3,176 in 1939, 3,201 in 1947. Central Camuy in 1947 was rated 22,692 and we have no figure whatsoever on that company in 1947.

* * * * * * * * * *

Q. Assuming, as I understand was a fact, that individual companies—that the refining capacities of individual companies had not materially changed over the years. The fact that there was a substantial reduction in shipments during the war period would indicate to you, would it, that the war years would not be a fair indication of the ability of that company to market sugar. A. That is correct. The dislocations during the war period and dislocations that were necessary for the furtherance of the war, including the import and export controls, price controls, shipping controls particularly with regard to allocation of shipping to ports and the quantity of sugar that could be brought up, the differentiation of the tripartite agreement between Canada, the United Kingdom and the United States, making a reallocation to where it would do the most good for the war effort, whether it would be refined or
70 whether it would be in raw sugar, the zoning restrictions in the United States, the actual CCC purchase

of the crop for further distribution; all had a bearing on dislocations within the Island as to their ability to market and, are considered to be completely unrepresentative.

Q. You have indicated a number of war time dislocations resulting from the various government restrictions and government programs that were carried on during the war. Could you state, if you know, when price control over sugar, for example, ended? A. October 31, 1947.

Q. And sugar was rationing as late as what date? A. Consumer rationing I believe went off sometime in May or June and industrial rationing July 28, I believe.

Q. What year? A. 1947.

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71 Q. You indicated this morning that Title II of the Sugar Act under which sugar quotas are imposed has been suspended by Presidential Proclamation. Do you know when that suspension took place? A. The last suspension took place on April 13, 1942 and was reimposed on November 28, 1947.

Q. And during that time, according to the finding made in the Proclamation there was an emergency with respect to sugar? A. That is correct.

Q. Would you say that during all of this period of wartime government regulations and restrictions, involving the various controls which you have mentioned, and which I shall not repeat, would change the competitive position of the parties that are interested in this hearing? A. Yes, sir.

Q. Does the Department have any policy which you could state for the record, with respect to making allotments in a way that would not perpetuate this wartime pattern of competition between the companies? A. As I mentioned on page 6 of my statement this morning, the wartime years were all so considered undesirable because of the wartime policy of the Department to minimize interference with the prewar competitive relationships of industry.

72 Q. You indicated in your testimony today—or rather, you repeated—the basic standard which the

statute requires the Secretary to use in arriving at these allotments, namely that allotments shall be made in a manner that will give a fair, efficient, and equitable distribution of the quota. Would you say in arriving at this proposal, that it is the judgment of the Department that the use of the standards of the Act in the manner in which they have been used in this proposal, would give a fair, efficient, and equitable distribution? A. I do.

Q. Would you say that it might be possible also to work out proposals which would achieve some fair result, and that the Department would be glad to give full and careful consideration to these proposals if presented for this hearing? A. The proposal as presented by the government is what we consider to be a fair, efficient, and equitable distribution of the quota, all things being taken into consideration. The order also stated that—I might say the order didn't say that, but while we were required to put in our proposal, the order also stated that the Secretary was calling this hearing for the purpose of receiving all the evidence possible to make a fair, efficient, and equitable decision, and if anybody has any other proposal I am quite sure that the Presiding Officer and the Secretary will give full consideration to any other proposals.

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73 By Mr. Lee:

Q. Mr. Davis, you enumerated a number of dislocations—in fact a rather lengthy number of dislocations—that in your opinion made unrepresentative the war years for the purposes of ascertaining past marketings. Would those same dislocations make the postwar years unrepresentative for the purpose of ascertaining ability to market? A. I believe I answer that before, Mr. Lee, in answering the question, that, while the Department does consider that the past marketings in the years 1935 to 1941, as representing the equitable use of the figures for past marketings, if in spite of all the dislocations and other factors during the war, some refiner has marketed more during the war years,

when measured as his ability to market, than he may have in the pre-war years, it is considered that it should be taken as their ability to market their highest year.

Q. The war years are representative for that purpose? A. Yes, sir.

74 Q. Mr. Davis, I was confused by your answer to one of Mr. Bagwell's earlier questions. As I understood it, you testified this morning that the highest marketings for the years '35 to '47 have been selected instead of physical plant capacity, as a basis for determining ability to market. A. I think Mr. Bagwell's question was:

In the study of the different proposals and in working over every conceivable formula that we could use, had we taken into consideration at any time mill capacity. * * * A. And I said that in our study we have taken in not only mill capacity but many other formulas. And we came up with this one as the one which we considered the most fair, efficient, and equitable. In the light of the statement that I just previously read, the wartime years are also considered undesirable because of the wartime policy of the Department to minimize interference with the prewar competitive relationships of industries.

Q. You did not use plant capacity however as a basis for determining market under the present proposal? A. Under this proposal, I did not, sir.

Q. Mr. Davis, you stated that in your judgment, various governmental controls during the war period changed the competitive positions of the various refiners, so that

75 those competitive positions I presume become dislocated from what you regard as normal.

Do you have any facts on which you base the conclusions that those war controls operated in such a fashion as to dislocate the competitive positions? * * * A. Your question is rather difficult, Mr. Lee, but I think it might be answered in this manner: That competitive relationships between maybe any particular company in relation to another I do not know, but in the over-all picture of the war period and the postwar period up to date, the figures as presented in

exhibit A clearly demonstrate in comparison with the competitive positions as they were in 1937, 1938, and 1939 and 1941, to be completely out of line.

* * * * * * * * * * *

Q. Those figures I take it you would agree do not necessarily demonstrate that the differences to which you refer were attributed to wartime controls. My question was whether or not you had any facts on which you based your conclusions that the wartime controls resulted in dislocations of the competitive position of the refineries,
76 whether you had any facts on which you based that conclusion. A. No facts other than the figures already presented.

Q. Mr. Davis, just one more question. You testified that the proposal submitted was, in your judgment, equitable. Do you adhere to that conclusion when one of the results of the proposal is that the Puerto Rican American allotment is very greatly increased over any that it had over the marketings involved in the last 7 years, while that of Igualdad is greatly decreased over most of its marketings in recent years? A. I do.

By Mr. Quinn:

Q. Mr. Davis, would you say that where the control of all sugar produced in Puerto Rico was in the control of the Commodity Credit Corporation during the war years, that the competitive positions of the different refineries was not within their control? A. Within the control of the refiners?

Q. Yes. A. The allotments, except in 1947, were not made, as I understand it, to the individual refiners.

Q. Could a refiner go out and purchase as much
77 sugar as he wanted to? A. Not as much as he wanted to.

Q. If a refiner in Puerto Rico was in the habit, or had a history of buying raw sugar for its refinery, from six or seven other raw mills located in owner's property, could that refiner go out and purchase those raw sugars— A. No.

Q. —in a free market? A. No.

Q. Isn't it a fact that Commodity Credit regulated the flow of the raw sugar available in Puerto Rico to the different refineries? A. Not to the different refineries as I understand it. The quantity of sugar that Commodity Credit Corporation, during the wartime, considered necessary to be made into refined sugar, was allotted to the raw sugar producers who in turn transferred it or sold it to the refiners to be processed into refined sugar and shipped to the United States.

Q. But it is a fact, is it not, that the Commodity Credit Corporation incorporated in its contracts a clause to the effect that it could determine the amount of raw sugar that could flow to any specific refinery in Puerto Rico? A. It is my understanding that the 1944 purchase contract for Puerto Rican Raw Sugar in Article II stated that upon the seller's application there will be released to seller for sale to Puerto Rican refiners, for refining, such quanti-
78 ties of raw sugar as the Commodity may approve. I may go further in amplifying that question, with the further statement that when the Commodity Credit Corporation purchased the entire Cuban crops during the same corresponding years, it is my understanding that there was an article in that contract which stated that no more than 375,000 short tons of refined sugar would be shipped by Cuba to the United States. And in making the Puerto Rican contracts it was the policy of the Department in administering those contracts, when and if it became necessary, to see that the same amount—corresponding amount—for Puerto Rico in the old 1937 sugar orders between Cuba and Puerto Rico was not exceeded to any large extent, because the war situation was such, and the reallocations of the enormous quantities of sugar had to be fluid, and in some instances they much preferred to have raw sugar for disposal rather than refined sugar.

Q. Well, that clause you just read, Mr. Davis—wasn't a similar clause included in all Commodity purchase contracts for the Puerto Rican crops, or a somewhat similar clause? A. A somewhat similar clause, yes.

Q. And Commodity Credit Corporation purchased the Puerto Rican crops from 1944 to 1947, inclusive, is that correct? A. I believe that is correct, sir.

Q. And prior to that, the Defense Supplies Cor-
79 poration purchased the unshipped amount of the 1943 crop, is that correct? A. Or the '42 crop?

Q. '42 crop. A. '42 crop, yes, sir.

Q. Mr. Davis, let me ask you this question: If a refiner in Puerto Rico was subject to a wartime control on shipping whereby all shipping out of the Caribbean area, including every island in the Caribbean area down to the northern coast of South America, was regarded as an area subject to one shipping pool, would you say, if that be a fact, that the competitive position of a refinery in Puerto Rico could be disturbed during the war years? A. It could have, depending upon the determination of the proper authorities as to what sugar they were going to bring up or what sugar they were not going to be allowed to ship on any particular vessel.

Q. Would your answer be the same if the authority to ship sugar was entirely in the hands of a government agency here that regarded the whole Caribbean area as a pool to which they would allot ships to move products from that whole region?

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80 Q. The question might be a duplication in the sentence but what I was driving at was: If the determination of what sugar was to be moved out of Puerto Rico rested in Washington rather than normally in Puerto Rico, would your answer be the same? A. I think it would

By Mr. Lee:

Q. May I ask this:

Do you know, Mr. Davis, whether the Commodity Credit Corporation under the clause that you read and similar clauses, ever refused an application of Puerto Rican American to release raw sugar for refining? A. I have no knowledge, sir.

Q. Do you know whether they ever refused any refiner? A. I have no knowledge.

By Mr. Quinn:

Q. Mr. Davis, are you familiar with the 1947 picture as regards direct consumption sugar? A. Somewhat.

Q. Do you recall CC letter No. 41? A. I do not.

81 Q. Do you have any knowledge as to whether or not the Department of Agriculture forced Puerto Rican American to ship raw sugar instead of refined? A. I have no knowledge of that.

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84 Mr. Davis: Mr. Presiding Officer, may I interject for a moment. Here are the figures that were requested. I believe I have them now. Exhibit 21 from the hearings on revision of sugar order No. 10 allotment of 1938 Puerto Rican sugar quota and allotment of local consumption quota held May 4, 1938 shows the delivery of sugar to local consumption by Puerto Rican processors during the year 1935, and includes raw sugar.

The other table is from the same exhibit and also includes raw sugar deliveries for local consumption for the year 1936. [Exhibits 7 and 8]

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90 **James M. Giles** was called as a witness, having
91 first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Quinn:

Q. Mr. Giles, you have given your full name? A. James M. Giles, Manager, Puerto Rican American Sugar Refinery Incorporated.

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Q. Will you please state how long you have been working for the owners of the Puerto Rican American Sugar Re-

finery? A. Since mid summer, 1919—June, I think was the month.

Q. Were you there when the—when was the Puerto Rican American Sugar Refinery constructed? A. Construction was mostly in 1925, first refining in 1926.

Q. Did you market any refined sugar in the continental market in 1926? A. Some. Five or six thousand tons.

Q. When your refinery was built, was it the first refinery in Puerto Rico? A. Strictly speaking, yes. That is,
92 the first refinery that melted raw sugar and treated it with carbon in a liquid state and boiled white sugar.

Q. When Puerto Rican American was built did you really bring a new industry to Puerto Rico? A. Yes, we did.

Q. What makes you say that? A. We applied to the insular government for tax exemption in accordance with the law for a period and obtained that exemption as a new industry.

Q. When the Puerto Rican American was built, Mr. Giles, in 1926, what market did it have in mind? A. Mostly the market in the continent. At that time, consumption of refined sugar in Puerto Rico was not very large.

Q. Would you hazard a guess at what the consumption of refined sugar in Puerto Rico was at that time? A. Not over 10,000 tons. I think it was less.

Q. You testified you made and shipped refined sugar in 1926? A. Yes.

Q. Did you continue to make and ship to the continental market refined sugar for 1927, '28 and '29? A. Yes, and on up to the present day.

Q. Did you continue to make and ship refined sugar for 1931, '32, '33 and '34? A. Yes.

93 Q. Do you recall the figure that the Puerto Rican American Sugar Refinery reached in the way of shipments to the continental market in 1933? A. Something over 100,000 tons. I don't recall the exact figure—'35, was the first year there—I think it was 102,000 tons if I am not mistaken.

Q. How does the refinery operate? Will you describe it in a general way for the record? A. The refinery is located along side Central "Mercedita" which makes raw sugar. It takes the raw sugar from Central "Mercedita" and anywhere from 5, 6 up to 10 or 11 raw sugar mills, melts that sugar, refines it, bags it, stores it for a while at times, ships it eventually to the continent when it is not sold locally.

Q. You mentioned that it takes sugar from 5 or 6 or 8 or 10, I believe you said, other raw mills? A. Yes. In different years the number varies.

Q. Are some of these mills located very close to the refinery? A. Some of them within five or 10 miles. Others a longer distance.

Q. Is there some sugar produced close to the refinery? A. As I stated, Central "Mercedita" produces sugar right along side the refinery.

Q. Does Central Mercedita produce enough sugar
94 to take care of the needs of the refinery? A. No.

Q. Does Central Mercedita produce enough sugar to care for the needs of the refinery as regards its continental market alone? A. This year, if all Mercedita sugar had been shipped to the continent it would have covered the continental allotment, with a slight average.

Q. But as a general rule, does Mercedita raise enough sugar cane to produce enough sugar to care for the needs of the refineries? A. Not previous to this year.

Q. Is the operation of the refinery tied in with the raw house, or is it an independent operation? A. The operation is independent. That is, it buys the raw sugar, but there are interchanges.

Q. I mean, the physical operation of the raw house, the act of manufacturing. A. The manufacturing is strictly the refinery.

Q. Does it operate on a five day week or how? A. Seven day week.

Q. Is it a 24 hour operation? A. 24 hour operation except when there is some breakdown or some interruption that is unavoidable.

Q. In other words, a continuous operation once the
95 crop starts coming in. A. Continuous with only one stop for the whole week, sometimes a four or five days stop, that is, continuous, except maybe some breakdowns or strikes which have also stopped it a few times.

Q. What does the refinery use for fuel? A. Part of the steam used is from the gas from the raw house. That is supplemented by using fuel oil.

Q. Would you say that fuel oil was essential for the operation of the refinery as far as fuel needs were concerned? A. Yes, it is.

Q. Are all the records of the refinery under your custody and control? A. Yes.

Q. Did you examine the figures of those records before you left Puerto Rico to come up here to testify? A. I did.

Q. Did you examine the figures as they appear in the Federal Register of December 6, page 8211? A. I have examined them, yes.

Q. Do those figures substantially agree with the figures of the refinery records? A. I have no changes to suggest except as was already mentioned here this morning a slight transference, misprint, in two different years.

96 The statement was given, total 162,000: it was 126,000. The 2 and 6 were transposed, and in the last year, '47, the hundreds were transposed. In one, it is 543 and in the other it is 453. Those two transposals are the only suggestions I have about correcting the record.

Q. Has the refinery ever used any raw sugar from the raw mills located on the north coast of Puerto Rico? A. Yes.

Q. Would you care to name those mills? A. From Central Cambalacke, I think several—

Q. You stated that the refinery took raw sugar from raw mills located near the refinery? A. Yes.

Q. Or fairly close to the refinery? A. The nearest one up to last year was Central Bocachica, the next nearest was Central Constancia, the next nearest was Central Cortada. After that, I am not quite sure about the distances, but

Central Armenian, Central Pellejas, Central San Francisco, Central Arreco, and in one or two years we bought sugar from Central Lafayette. Also from main Central Aguirre itself, and Cortada which I have already mentioned is one of the Aguirre mills and we got sugar from their mill at Machette, and when Central Caribbe was operating, we took all of their sugar.

97 Q. Have you been taking the raw sugar from these mills for a short time or a long time? A. Quite a number of years.

Q. Will you state the method of dealing with these raw mills? A. Prior to the emergency period we bought the sugar, entered into the contracts with different mills to buy sugar which in some cases we took it from the mill, in other cases it was delivered at the refinery

In others, we took it at the mill. We took delivery at the mill which furnished the sugar.

Q. Do these mills, some of these small mills near the refinery, have storage facilities? A. Very little.

Q. Would you say that you take their sugar as they make it? A. In one case, the storage facility just for what they produce overnight. Next morning, they want us to take the sugar away and if you don't do it pretty quick they begin to complain that they are full of sugar and can't move.

Q. How do you get that sugar to your refinery? A. By trucks.

Q. Mr. Giles, you stated that you made and shipped white sugar, refined sugar, to the continental market in 1926? A. Yes.

98 Q. Has Puerto Rican American shipped refined sugar for every year since then? A. Every year since 1926.

Q. In other words, you have a historical record of 22 years in operation as a manufacturer and marketer of refined sugar in continental United States? A. That is correct.

Q. Do you know of any other refineries in Puerto Rico that are dependent upon a source of supply of raw sugar from mills located other than on their own property? A. I don't know the details of the business dealings of the other refineries, but I do know that their total shipments are very close to their own production. It may be that they ship some of their own sugar and buy from some other mill. That, I don't know.

Q. Do you know of any other refinery that takes raw sugar from so many raw mills as you do in Puerto Rico? A. I do not.

Q. I believe you stated the refinery could operate independently of the raw house. A. It can.

Q. And does it? A. At times it has. That is, I understand you to mean that it can operate when the raw house is not operating.

Q. Do you know of any other refinery in Puerto
99 Rico that operates that way? A. That is another detail that I couldn't be sure about but my impression is that none of them do.

Q. What is the longest period of time the refinery is operated over a given year. Has it been ten months or is it operated for a full 12 months or not? A. Never for a full 12 months, but several years during ten months.

Q. Mr. Giles, in order to get this raw sugar from your suppliers, has that ever interfered with the raw production on your own property? A. Somewhat at times.

Q. Will you explain how? A. That was during the emergency period when shipping space was not available in sufficient amount and warehouses were full, and I remember on one occasion we shut down our own mill and took sugar from another Central because we didn't have enough room to store our own. The other Central produced a smaller amount which we couldn't take care of.

Q. In other words, because it was customary for you to take that sugar, rather than sacrifice that source of supply for that year or any future year, you lessened the production of your own raw supply? A. Yes. We had established

the custom of taking the sugar from these mills practically as they produced it and in order to maintain cordial
99-A relations, we had to more or less keep on taking the sugar that was as much so as we could.

Q. Mr. Giles, do you recall when the first restrictive act, known as the Jones Costigan Act was considered and passed by Congress? A. It was in 1934.

Q. Do you recall the formula that was used in that Act by Congress? A. Not distinctly, no.

Q. Do you recall what years that the Jones Costigan Act selected as a criterion for future shipments of direct consumption from Puerto Rico to the continental United States? A. I am sorry, I am not sure. There were also some questions of production quotas for raw sugar about that time and my impression is that the years '31, '32 and '34 were used, but I may be off one or two years on some of that.

Q. Do you recall whether the Congress stated in the law that it took an average of those years, or the highest of those years? A. I think there was an alternative proposal. I don't remember the details of the formula, but I think it was either the average or the best year, which ever was finally determined. I am not quite sure how they worked it out.

Q. Do you recall anything in Puerto Rico in 1932 that affected the production of sugar? A. I think that was about the time that NRA began to function, or
100 shortly after that.

Q. The NRA was 1933 or '34 but going back to prior to sugar legislation, do you recall any physical condition in the production of the crop in that year, anything that happened to lessen the supply of sugar? A. In '32?

Q. Or in '31? A. So many things have happened at different times.

Q. Was there a hurricane in Puerto Rico that year? A. Not to affect—let's see. '28 was the last hurricane that hit the south coast.

Q. Wasn't there a hurricane in Puerto Rico in 1932? A. There was but it didn't affect the south coast very much. That was mostly the northeast of Puerto Rico.

Q. Mr. Giles, when the refinery was built and for several years thereafter, did you have any reason to believe that your manufacture and shipment of refined sugar to the mainland would be curtailed or lessened in any sense? A. No. Up to the time the first Sugar Act, the triple A Act, was passed, we did'nt have any intimation that we were going to be limited except by our capacity to refine and sell.

Q. Would you care to state what that capacity was approximately? A. By 1933, it was considerably over a hundred thousand tons of refined sugar.

101 Q. And by 1933, had you actually made and shipped in excess of 100,000 tons to the continental market alone? A. My recollection is that we did ship more than 100,000 tons in 1933 or '34, I am not sure just which year it was.

However, I might say that the Agricultural Department has the records of all those things.

Q. Mr. Giles, it has been testified to here that the first order [Exhibit 9] issued pursuant to the original Act was made in 1935. • • • Will you look at that Act Mr. Giles and state the amount of sugar that Puerto Rican American Sugar Refinery was allotted by the Department of Agriculture that year? A. "Pursuant to Section 1 of this order it is hereby allotted as follows: to Puerto Rican American Sugar Refining Company, 118,217 short tons, raw value."

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102 Q. Will you name all the other processors which were given an allotment pursuant to that order? A. South Puerto Rican Sugar Company of Puerto Rico, 12,312 short tons, raw value."

Q. Any other processor named? A. No more here.

Q. In other words, the only two companies that the Department recognized in that order of 1935, pursuant to the Jones Costigan Act were Puerto Rican American and South Puerto Rico. A. That is all.

Q. Did South Puerto Rico produce a refined sugar, as you know the prodr:t of Puerto Rican American to be? A. At one time there was a legal definition of refining in the State of Louisiana, in a case there, and it was defined as melting raw sugar, removing the color, while in the liquid state, and then crystalizing white sugar.

The South Puerto Rico Sugar Company at that time was not following that process.

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111 **J. Adalberto Roig** was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lee:

Q. Will you state your name and place of residence, and connection with the Central Roig Refining Company? A. My name is J. Adalberto Roig, and I reside in Humaco, Puerto Rico. I am Vice-President of Central Roig Refining Company.

Q. What is your profession? A. I am an engineer by profession, graduate of the Massachusetts Institute of Technology.

Q. How long have you been engaged in the business of producing and refining raw sugar? A. I have been engaged in the business of producing and marketing raw sugar since 1934.

Q. And refined sugar? A. Since 1936.

Q. Are you familiar with the problems in the production and marketing of both raw and refined sugar? A. Yes, sir.

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113 The Witness: During the period elapsed since the last contested hearing on this subject in the latter part of 1938, there have been substantial changes in the refining situation in Puerto Rico.

First, many of the Puerto Rican refineries have gradually increased their capacity over all or a portion of this period.

Second, the consumption of refined sugar locally in Puerto Rico has increased substantially with the result that many refineries have increased their marketings of local consumption sugar.

In some instances this has been accompanied by a decrease in their marketings of direct consumption sugar for the continental United States, while in other instances refineries have shown ability to increase both their marketings of direct consumption sugar for the continental United States and direct consumption sugar for Puerto Rico.

Third, some refineries during this period have extended their refining period by several weeks.

At the time that I testified in 1938 the Central Roig
114 Refining Company had a capacity of 200.67 short tons refined value of sugar for a 24-hour period, as measured by the best five consecutive days of a consecutive 10-day period.

Today the capacity of the Roig Refinery is greatly increased. At the same time, during this period, we have increased our marketings of direct consumption sugar from approximately 12,000 short tons raw value to over 27,000 short tons raw value for the continental United States and have increased our marketings of direct consumption sugar for local consumption in Puerto Rico from approximately 6,000 short tons raw value to 21,000 short tons, raw value.

All our direct consumption sugar is refined sugar. We do not market turbinado sugar or direct consumption raw sugar.

In its proposal the Government has given fifty percent weight to past marketings and for that purpose has selected an average of deliveries of Puerto Rican direct consumption sugar to the continental United States by each refiner for the years 1935 through 1941.

The facts as to marketing during such 6-year period fail to take account of the changes in marketing that occurred during the subsequent 6-year period of 1942 to 1947.

Past marketing starts with marketings in 1947 and includes marketings in 1946, 1945, 1944, 1943, and
115 1942, just as much as marketings in the six earlier years. Any selection of years for past marketing should start with the immediate past and continue back for a representative period.

From my knowledge of marketing of Puerto Rican direct consumption sugar for the continental United States, I am of the opinion that the last ten years, 1947 to 1938, inclusive, would be a representative period. Such a ten-year period would include years during which quotas were suspended, such as 1940, 1942, 1943, 1944, 1945, 1946, 1947, in several of which years there were no governmental restrictions on marketing.

It would also include years in which the refiners by agreement restricted their marketing, and years in which restrictions were imposed under wartime controls.

In still other years of this ten-year period there were quota controls imposed by the Secretary under the Sugar Act of 1937 without prior agreement among the refiners.

Further back than the ten years last past is not representative. In 1935 the Central Roig Refinery was not in existence and we had no deliveries, and Igualdad had no deliveries in 1935, 1936, and 1937, except small quantities of turbinado.

Skipping the years 1942 to 1947, and selection of the years 1935 to 1941 results in an unrepresentative pe-
116 riod as to past marketings and one which, I believe, the Secretary will conclude is discriminatory against Roig and Igualdad and preferential to their competitors.

Central Roig Refining Company increased its production throughout the war period, and its combined deliveries to the continental United States and to Puerto Rico were greater during that period than its combined deliveries during the preceding years.

The total production and combined deliveries of some other refiners were less during the war period than during the preceding years. These facts should add weight to the inclusion of the last seven years in any period that is truly representative of past marketings.

In its proposal the Government has given the remaining fifty percent weight to ability to market as measured by the highest one-year delivery of direct consumption sugar to the continental United States during any of the years 1935 to 1947, inclusive. Such a formula results in Aguirre and Igualdad having their ability to market determined by deliveries in 1947, while Puerto Rico American has its ability to market determined by deliveries in 1935, Cuanica by deliveries in 1939, and Roig by its deliveries in 1940.

Ability to market in any year is, in my opinion, best evidenced by deliveries for market in the immediately preceding year and the facts as to deliveries for market
117 eight, nine, and thirteen years ago are not an adequate basis for determining ability to market in 1948. I say this even though Roig had larger marketings in 1940 than 1947.

During the period since 1935 ability to market has been affected by changes in refining capacity. Ability to market direct consumption sugar to the continental United States has been altered in some instances over the last thirteen years by increase of local deliveries and consequent decrease of continental deliveries when refiner was unable to meet the maximum market available to it for both and chose for economic reasons to select the more highly profitable local market.

Ability to market sugar for the continental United States is not the same as ability to produce sugar. A mill may have a large ability to produce and less ability to market in the continental United States because of the fact that it does not have adequate proportionate shares of sugar of its own to refine and is unable, even in unrestricted years, to acquire sufficient other sugar to run its refinery to production capacity.

Ability to produce is also not a measure of ability to market in the continental United States. A refiner's limited production may as a result of his own policies be committed or allocated for local consumption in Puerto Rico with the result that he is less able to market in the continental United States.

118 It is my opinion that not only are marketings eight, nine, and thirteen years ago unrepresentative of present ability to market, but that a formula providing such a measure of ability to market is unrealistic and consequently will result in discrimination.

Should the Government's proposal be adopted in its present form, Puerto Rico American would receive an allotment far greater than deliveries during any of the last six years 1942 to 1947, and also more than its 1941 deliveries and San Francisco would receive more than its deliveries during any of the last five years.

On the other hand, Roig would receive far less than its deliveries for the last two years and also substantially less than its deliveries during five of the last six years, and Igualdad far less than its deliveries for any of the last three years and substantially less than any of its deliveries for the last six years.

I suggest for consideration by the Secretary of Agriculture a formula as follows:

1. That fifty percent weight be given to past marketings and fifty percent weight to ability to market, as provided in the Government's proposal.

2. That past marketings over an average period be used, as proposed by the government, but that such past
119 period be one that starts with the first part marketing year, 1947, and continues for a representative period, namely, ten years.

3. That ability to market be determined by deliveries during a single year, as set forth in the government's pro-

facilities and administration, ordered that the trucks carrying sugar to the pier must not use lights at night. An insular law provides that any motor vehicle must use lights at night, so we were up against a little difficulty there. Shipping was entirely inadequate. Many times, all through the latter part of the crop, our warehouses were full of sugar, we couldn't move it by ships, and we were up against a problem of whether or not we would shut down tomorrow or next day, or maybe around four or five days longer, and it was always an uneasy question whether or not we would get any transportation in time to relieve the situation. At one time, I recall we had one million bags of sugar in different warehouses—refined sugar—in different warehouses in and around Ponce and Playa, waiting for ship-
158 ment. Those were substantial difficulties.

Q. Mr. Giles, did the supply of sugar to the refinery suffer on account of bags in any way, to transport raws to the refinery? A. We had difficulty in getting bags in sufficient quantity because of the control of the sale of cotton goods. The bag makers couldn't always get the goods to make bags. They had to get in their applications—I think they made quarterly applications for allotment of supplies—and sometimes we were running so short on bags that it looked like we might have to shut down for lack of any bags to put the refined sugar in. It never did quite come to that point, but we were always up against the problem.

Q. Mr. Giles, did you have to alter your refining operations on account of black-outs? A. No. Not the refinery. When the first black-out order came, the only mill operating, from which we take sugar, was Central Bocachico. The first day we ground was the same day, I believe, that Pearl Harbor was attacked. The next day we were ordered by the Army to shut down and black out the factory that night. We explained to them the embarrassing situation that that would put us in and they allowed us to turn out most of the lights and run through the night, and then they

posal, but that such year be one representative of present ability to market, namely, 1947.

4. That, as provided in the government's proposal, there be an unallotted reserve to be reallotted to the extent that it is unused, but that such an unallotted reserve be based on the same period as that for past marketings, namely, the last ten years, 1947 to 1938, inclusive.

The above proposal is in line with the action taken by the Secretary of Agriculture when he last made allotments following a contested hearing in 1938.

In Puerto Rico Sugar Order No. 13, issued January 5, 1939, the Secretary measured past marketings by giving fifty percent weight to such marketings during the then four immediately past years, 1938, 1937, 1936, and 1935. There was no gap or skipping over to earlier years only as in the present proposal.

In that same order of the Secretary ability to market was measured by the then immediate past year, 1938, and not by turning in some instances to years long past.

In making use of one particular year for ability to market that order determined such ability, three-fourths by refined capacity during that year, and one-fourth by deliveries during that year.

However, the Department, in its present proposal, measures ability to market solely by deliveries, and my suggested formula follows the present proposal of the Department in this respect.

Mr. Presiding Officer, I believe the proposal I have made will provide for a fair, efficient, and equitable distribution of the Puerto Rican direct consumption quota for continental United States, and respectfully urge its adoption by the Secretary.

By Mr. Lee:

Q. Mr. Roig, your proposal, as you testified to it, included only the factors of past marketings and ability to market, while the law, as a result of recent amendments,

seems to state that the Secretary shall take into consideration not only those two factors, but the processing of sugar to which proportionate shares pertain. Is it your view that the factor of proportionate shares should not be considered by the Secretary? A. Mr. Lee, in presenting my suggested proposal, I am by no means suggesting that the Secretary shall ignore any factor that the law requires him to
121 consider. I confine my testimony to the facts as to past marketings, and ability to market on the assumption that the Secretary, by omitting in his present proposal the factor of processing of sugar, to which proportionate shares pertain, had already determined in accordance with findings of his predecessors, and even today, in earlier allotment orders, that such factors are inapplicable. However, if the law so requires it I am willing to accept that the Secretary add to my proposed formula a small weight based on proportionate shares which should be fair and equitable.

Q. Mr. Roig, suppose a refiner in Puerto Rico had insufficient sugar to supply the demand for both the increased consumption of refined sugar to Puerto Rico and the increased consumption or demand for direct consumption sugar to the United States, would that refiner have reason to increase his local consumption deliveries at the expense of his sales or deliveries of direct consumption sugar to the United States? A. I would say yes.

Q. What would be the reason? A. Because the local market for the last few years, especially during war years, has shown a better price than the export market. I mean the market in the continental United States, because of
122 the freight differential, and since no sugars could come from the continent of the United States to Puerto Rico, that differential favored the local price.

Q. That resulted in local price being higher? A. It resulted in the local price being higher than the equivalent export price.

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Cross-Examination

By Mr. Quinn:

Q. Mr. Roig, did refinery Roig experience any shipping difficulties during the years 1942 to 1946? A. I should say that the difficulty did not exist even though we are located fifty miles from the nearest port where we are shipping sugars. As a matter of fact, we are the only refinery in Puerto Rico that should have had difficulties, and such difficulties were not apparent.

Q. Am I to understand that Refinery Roig had no difficulty shipping its sugar to continental United States during the years 1942 to 1946? A. We had no difficulties of transportation and getting the boats everytime we
123 did request getting the space on the boats.

Q. Who did you have to make those requests on to get shipping space? A. From the shipping board agent in San Juan.

Q. In other words, you could not ship sugar as you made it? You had to apply for a permit to get the sugar out of the Island? A. That is right.

Q. Did you have any difficulty getting fertilizer for the production of your raw sugar to supply the refinery? A. In only one year we did not get what we do usually. Perhaps you are not acquainted with the fact that our properties are one of the properties in Puerto Rico that require the most fertilizer per acre. Therefore under a comparative basis for the rest of the Island, we were getting enough fertilizer.

Q. Did you have any difficulty getting bags during 1942 to 1946? A. No, sir.

Q. You had no difficulty whatsoever? A. No, sir.

Q. Did you have any difficulty due to strikes during 1942 to 1946? A. No, sir.

124 Q. You had no strikes whatsoever? A. We may have had strikes, but they were fixed up and we had no difficulty later on.

told us we would have to get small blue lights, and we
159 could use those provided they were not visible from a certain angle up in the air, and then we got blue paint and painted the globes we had—we couldn't get the blue glass for a good long while, but we painted the electric light bulbs and kept on in that way.

Q. Did you have any difficulty, Mr. Giles, in getting your product from the refinery to the dock due to gasoline shortage or anything? A. Yes. Gasoline shortage and the tire shortage, or the control or sale of tires, or the impossibility of getting tires for the trucks at times.

Q. Did your supply of raw sugar suffer by reason of lack of fertilizer on the part of your raw supplies? A. In several of the war years, it did suffer considerably.

Q. Did you have an experience whereby the shipping company refused to take refined sugar? A. Yes. On one occasion, we were told by the steamship agent, first, and then by the San Juan representative of the War Shipping Administration, that no more refined sugar—or no more space for shipping refined sugar—would be allotted until certain amounts of raw sugar had been shipped, so that we had to go on refining and storing sugar as long as we could find space to store it in.

Q. Mr. Giles, all during the war years, you were
160 refining more than your capacity; is that right? A. More than our capacity?

Q. Were you refining at your capacity during the war years—the raw capacity? A. I don't get that question right.

We were refining more raw sugar than Central Mercedita produced, if that is what you mean.

Q. The question is, Mr. Giles: Did you refine during the war years more raw sugar than was available on the properties where the refinery is located? A. Yes.

Q. Will you explain the difficulties that you experienced in refining, and whether those difficulties were common to all the refiners in Puerto Rico? A. I think I mentioned

Q. Your production at no time was materially interfered with during 1942 to 1946 by a strike? A. I believe that the records of our refinery show that, although throughout those periods we were able to increase production for both local and export markets which shows that no such difficulties were there.

Q. Was your refinery ever forced to shut down on account of a strike? A. It may have shut down for a short period, but of no consequence.

Q. Do you know whether it did shut down, or not? A. It may have shut down. I don't recall any specific period.

Q. Did you have any difficulty getting fuel? A. No, sir.

Q. You had no difficulty whatsoever? A. No, sir.

Q. Did you have any difficulty getting gasoline? A. No, sir.

Q. You had no difficulty whatsoever? A. No, sir.

125 Q. Did you have any difficulty getting materials from continental United States for your refinery? A. No, sir.

Q. Did you ever apply for a permit to the Department of Interior to get materials for your refinery? Did the occasion ever arise? A. That was customary in getting materials to ask for priorities, and you would be granted such priorities in time to get the equipment for your crop.

Q. Isn't it a fact that the Department of Interior had complete control over every ounce of material that was shipped to Puerto Rico? A. That is right.

Q. Did the occasion ever arise where you had to apply to the Department of Interior for a permit to get materials for your refinery? A. Probably we did. I don't recall the exact details of it.

Q. You don't recall filing for such a permit? A. As I say we may have applied for these permits, but I don't recall the exact details of it.

Q. Would you say, Mr. Roig, that your operations during '42 to '46 were normal or abnormal? A. They were normal under an expansion program.

Q. You would not consider them abnormal by virtue of the war period? A. No, sir; they were under an expansion program because we had the ability to sell openly and the ability to market during that normal year.

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Q. Were your manufacturing operations altered by virtue of blackouts during 1942 to 1946? A. No, sir; not to any extent, because of the fact that we were fixed up so that any blackouts would not affect us.

Q. Did the military in any way interfere with your operations between 1942 and 1946? A. Not that I recall.

Q. Were you forced to comply with military regulations that you couldn't operate at night at any time during '42 to '46? A. We were told what not to do and we complied with what we were told.

Q. So the military did interfere, or make some suggestions about your operations? A. I believe that was general throughout the Island.

Q. In fact, then you were governed by the actions of the military authorities as to your manufacturing difficulties between 1942 and 1946? A. That is right.

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127 I believe I said we had no difficulties.

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Q. Mr. Roig, you suggested, I think, in your proposed formula that the Department take 1947 as the year in determining ability to perform; is that correct? A. That is correct.

Q. Do you recall that any refinery was restricted in the amount of refined sugar it could market in 1947? A. I believe we all were.

128 Q. Do you recall whether Puerto Rico American was restricted? A. As I said, we were, all were, so that includes Puerto Rican American.

Q. Do you recall the date that the Department of Agriculture restricted your shipments? A. I don't recall the date.

Q. Do you know how much refined sugar you had shipped into the continental United States for the calendar year 1947 up to April 5, 1947? A. I can't recall the figure.

Q. Did you ever hear of CCC letter No. 41? A. Yes, sir.

Q. Do you know the facts surrounding the issuance of that letter? A. Not the facts. I read the letter.

Q. Do you know what prompted the issuance of that letter? A. No, sir.

Q. You have no knowledge of that? A. No, sir.

Q. You suggested in your formula that the Secretary give some weight to the proportionate share; is that correct? A. Yes, a small weight.

129 Q. Has the Secretary ever given any determination in any of the sugar orders issued, to that factor in the law? A. They have not. They have expressed themselves that they don't see any use of doing it.

Q. Is Refinery Roig entitled to proportionate shares under the 1948 Act? A. I would think so.

Q. Refinery Roig? A. It is an affiliate of the El Ejemplo Roig Mills.

Q. Has Refinery Roig ever been given any proportionate share? A. It has been given a proportionate share to the raw mill.

Q. I am talking about Refinery Roig now. Has Refinery Roig ever been given a proportionate share under any Federal law? A. The question is not quite clear. I would like to have you expand a little more on it, because, as far as I know, no refinery has been given an allotment on which proportionate shares have been taken into consideration, so that includes Central Roig.

Q. Would you say that any refinery in Puerto Rico is entitled to a proportionate share? A. I would think that under 1948 law it is mandatory.

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130 Q. Now, you have accepted allotments previously in which the proportionate share language was not included; is that correct? A. Yes, sir.

131 Q. Did you at any time protest to the Department of Agriculture because they did not include that factor in their determination? A. Not in the past.

Q. What made you change your mind to believe that it should be in the 1948 Act? A. Because I believe that the law is changed enough so that proportionate shares should be given some weight.

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136 Q. At the suggestion of your counsel certain figures were read into the record this morning concerning local marketing. A. Yes, sir.

137 Q. I jotted those figures down, and so far as Refinery Roig, the lowest year was 3,633 tons for 1939, and the highest year was 17,588 tons for 1946. A. May I look at my own figures?

Q. Surely. A. Mr. Quinn, do you refer to the local consumption?

Q. Local market? A. Local market?

Q. In 1939 I have 3,663 tons. A. That is right.

Q. In 1946 17,588? A. That is right.

Q. The latter figure is roughly four or five times what you marketed in 1939; is that correct? A. Yes, sir.

Q. Does an examination of those figures indicate to you that your marketings during the war years were disproportionate in any way? A. They were increased, but I can't recall that disproportion. That shows our ability to market under any circumstances.

Q. But you did market locally five times as much in 1946 as you did in 1939? A. Yes, sir; so that Puerto Rican

138 American went up from 9,256 to 30,350.

Q. That is approximately three times what they did; is that right? A. Three times nine is around 27, but it is an increase of 23,000.

Q. Well, it is a little over three times what they marketed in 1939? A. Yes, but I want to make my point that the increase is 23,000 against our increase of only 14,000.

Q. Is your refinery as large as Puerto Rican American Sugar Refinery? A. It is not. It is getting close to it.

Q. When did you build your refinery? A. In 1935.

Q. Was it completed in 1935? A. Our first crop was 1936.

Q. When did you first market in continental United States? A. I believe it was 1936. It was in 1936.

Q. There was a restriction on the statute books then at that time as to the amount of sugar that could be brought into the continental United States; is that right? A. I don't recall.

Q. You don't recall the 1934 Act? A. Well, I know there was an Act, but as to specific clauses in it, I don't
139 recall.

Q. You have no knowledge of the fact that Congress had, by the time you started construction of your refinery, limited the amount of refined sugar that could be shipped to continental United States; is that right?

You had no knowledge of that fact? A. Well, it is a number of years back, and I would rather not answer yes or no.

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141 Q. Do you produce enough sugar on your properties to take care of the needs of your refinery? A. Up to a certain extent, and may I qualify my statement? This present crop we had to purchase outside sugars in order to be able to increase our local market, so we purchased local quota raw sugars, carried them to our refinery and refined them for the local market, but our own raw production is enough to take care of our export requirements plus the additional local market requirements that we have at present.

Q. Mr. Roig, according to the report of the Department of Agriculture, December 5, 1947, it shows Ejemplo Roig as producing 48,649 tons; is that correct? A. May I see the figures?

Q. Surely. (Handing to the witness). A. That is correct.

Q. That is your raw production for this year up
142 to December 5? A. Yes, sir.

Q. Will you turn the page over and tell us how much the figures show that you marketed in continental United States. A. We have marketed, up to this date, 27,274 tons.

Q. Will you also read the figure, from that same document, that you marketed locally? A. 17,478.

Q. They total, as I figure it up, 44,752? A. I suppose so.

Q. Short tons? A. Yes, sir.

Q. In other words, you did produce enough raw sugar to take care of the marketings up to December 5, both locally and in the continental United States; is that correct? A. No, it is not correct.

Q. Why not? A. Because you know that under the present distribution of local quotas in many instances you had to buy quotas from other mills since you didn't have enough of your own, and in our particular case, we did buy raws from a few mills to build up our local quota and those raw sugars were transported to our refinery and refined for that purpose.

Q. Was that just exchange of quotas, or what? A.
143 No, sir. An actual purchase of raw sugar and actual transportation.

Q. Aren't the figures there on raw production actual production by Ejemplo Roig, Central Roig? A. They are actual production, yes, sir.

Q. How many thousand tons? A. 48,649.

Q. And you marketed locally into the continental United States 44,000 tons? A. That is right.

Q. And yet you say you did not raise enough sugar to take care of the needs of the refinery? A. We raised sugars to produce as much refined as we could, but we did not have enough local quota to build up our requirements. We had to purchase raw sugars—local raw sugars—equivalent to local quota for that purpose.

Q. Do you sell raw sugar in the continental United States? A. In that particular case, we did sell raw sugars because they could not be shipped as refined, since we are limited.

Q. Have you sold raw sugars in the continental United States in previous years? A. No, sir.

144 Q. Has it been the practice of Roig to ship raw sugar into the continental United States? A. Possibly we have made a few shipments when restricted years were such that our export quota plus our local quota was less than our combined raw production.

Q. What other mills does the refinery have to depend upon for a raw supply of sugar? A. What other mills?

Q. Yes. A. Or do you mean what other refinery?

Q. What other mills does the refinery depend upon for a source of raw sugar? A. Well, from neighboring mills.

Q. Will you name them, please? A. Eastern Sugar, Pasto Viejo mill, Victoria, Juanita.

Q. Did you take raw sugar from those mills for 1947? A. Yes, sir.

Q. For 1946? A. No, sir.

Q. For 1945? A. I don't think so.

Q. For 1944? A. I don't think so.

Q. Did you take raw sugar from any of those mills for any previous year than 1944? A. In years back we
145 have purchased sugars from LaFayette and Aguirre, but I don't recall on which specific year.

Q. Mr. Roig, as far as the Department of Agriculture is concerned, would you say that as the years progressed, since 1937, you participated for the first time, I think, by virtue of the sugar order issued in 1938; is that correct? A. You mean in export of refined sugar to the continental United States?

Q. Yes, sir. A. Even before that we did ship sugar.

Q. But for the first time that you were given a quantity of sugar pursuant to a hearing and action of the Department of Agriculture, '38 was the first year? A. I believe so.

Q. You were given permission to ship on two subsequent occasions—1939 and again in 1940-41—permission to ship pursuant to hearings? A. Yes, sir.

Q. Was the treatment that you received from the Department of Agriculture better in those subsequent years; namely, 1939 and 1941—or was it worse than you received in 1938? A. I believe we had a slight increase, because we could show better performance all around as to ability to perform and ability to market plant capacity and such requirements, that were brought forth in the hearings.

Q. In other words, at the hands of the Department
146 of Agriculture, you received more in 1939 than you were permitted to market in 1938 in continental United States? A. We did receive more because we produced figures to show that we were entitled to more.

Q. But you did receive more, pursuant— A. Yes, sir.

Q. And in 1941, you did receive, at the hands of the Department of Agriculture, pursuant to an order, permission to market more in 1941 than you were permitted to market in 1939; is that right? A. In 1941, we all got together and agreed on a quota.

Q. Was that figure higher than what the Department permitted you to ship in, in 1939? A. Yes, sir, because we all realized that we had the performance and accepted our proposed formula.

Q. In other words on each occasion that it has been necessary for you to come here and receive an allotment, the treatment you received from the Department of Agriculture has been better in each instance? A. I am not complaining on that.

Q. I am asking you the question: Has the treatment been better or has it been downward? A. It has been better, because we have the performance, and I believe that we are entitled to it.

147 By Mr. Antonsanti:

Q. Will you give us your raw production at El Ejemplo or Central Roig for the past five years—raw production at

El Ejemplo and Roig? A. I don't have those figures with me.

Q. You don't have them? A. No, sir.

Q. The combined production of those two mills which are affiliated with your refinery—wasn't the combined production of those mills, in every one of those mills—the past five years—adequate for you to fulfill any quota that was allotted to you when it was allotted, and, as a matter of fact, didn't your direct consumption deliveries in the United States come out of that raw production? A. Yes, sir.

Q. During the war years, Mr. Roig, you were not faced, I understand, with a transportation problem of raw sugar to your refinery from outlying mills, and if you were, please explain. A. Well, we were faced with the transportation problems of raw sugar because we did transport raw sugars from our Central Ejemplo to the refinery at Central Roig, which is 8 to 10 miles distant, but the transportation problems were also faced with and solved because of the fact that our shipping port had to be San Juan, 50 miles away from our refinery. Therefore, we had no bad trans-
148 portation problems for raw sugars, we had transportation problems for refined sugar and we were able to find a solution for them.

Q. Mr. Roig, my question—I will repeat it to you—was: Beyond your own capacity of your own two raw mills, did you have a transportation problem to bring raw sugar into your refinery from any other outlying mill not owned or operated by your enterprise? A. We had no problems—

Q. You had no problems? A. —in that connection—

Q. You had no other sugar; is that right? A. —because we didn't buy any other sugars.

Q. Exactly, and your purchases of sugar from other mills were confined to 1947; is that right? A. That is, this present crop.

Q. And that was in order for you to fill your local quota, not the direct consumption quota? A. That is right.

Q. You stated that you had no difficulty with Army regulations or military regulations, transportation at night, and so forth. Will you state for the record whether your refinery is near the seashore, or is it in the interior of the Island? A. Our refinery is located on a very flat valley open to the sea, open to the Port of Yabucao, and it is located
149 about two to three miles from the port. Therefore, it is, as is very evidently seen, we had to submit to all restrictions on black outs and similar restrictions, because our refinery can be very clearly seen from the ocean.

Q. Did you state, Mr. Roig, that when you purchased the quotas of other mills, there was an actual transfer of sugars? A. Yes.

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Q. You said that during the war period, you were in the process of expansion; is that correct? A. Yes, sir.

Q. Isn't it true that your expansion began way before the war period? A. We did begin before the war period, but we never stopped expanding.

150 Q. I see, but the fact does remain that in 1940, which I believe you will accept as prior to the war period, was your highest producing year; is that correct? A. It was not our highest producing year.

Q. Well, for the purpose of this hearing, and concerning direct consumption sugar, it was your largest direct consumption deliveries to the United States, was it not? A. Yes, but it was not our highest producing year, because if you had 28,000 tons exported plus 6,000 tons sold locally, we have a production of roughly 34 to 35 thousand tons against 48,000 this present year.

Q. But following your formula and the reasons you have proffered behind them, does it appear to you that the year 1946 is more indicative of your ability to produce and market than the year 1940? A. Very definitely.

Q. You think so? A. Yes, sir.

Q. Is the fact that you only produced and marketed 27,246 tons in 1947 indicative that you could not have pro-

duced and marketed more? A. On the contrary, if you look at the record for 1940, the entire Island shipped 174,000 tons. If we had been allowed to ship that much this year, we probably may have gone over 40 or 50 thousand tons.

Q. Was there any difficulty in marketing sugar in
151 the continental United States from 1942 to 1947? Did you ever hear of any difficulties? A. No. We did not have any.

Q. No difficulty? A. No.

Q. Have you ever heard of any one else having difficulty disposing of sugar during the war years? A. On the contrary, it was easy to sell sugar then.

Q. Right. Consequently, sugar was tight, as they say in the vernacular; is that right? A. Yes.

Q. And anybody who had sugar could get rid of it very easily? A. Under rationing control.

Q. Right; but nevertheless, you want the Department, or the Secretary, to consider those years as normal and representative years to demonstrate somebody's—or anybody's—ability to market? A. Definitely.

Q. You do? A. Because we were able to do it and other refiners were able to do it, I can't see why other refiners didn't or were not able to do it.

. . . . . .

152 By Mr. Peyton:

Q. Mr. Roig, I think I understood you to testify that you had no shipping difficulties during the war years; is that correct? A. I don't know what you call shipping difficulties—

Q. Did you say that? A. —but since we were able to ship all our production, I don't think we had shipping difficulties.

Q. You had no shipping difficulties during the war years? A. I say that since we were able to ship everything we produced, I don't say we had any difficulties.

Q. You said you had no difficulties. A. We had no difficulties.

Q. Did you ever complain to the War Shipping Administration of the ones you were having? A. Once in a while we had to complain because we didn't get the boat at the right time and things like that, but eventually you would and the sugars were shipped, maybe later in the year, or what not, but they were eventually shipped.

Q. You did not consider those difficulties? A. They are difficulties, but as far as the performance there, I wouldn't say that they were difficulties.

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154 **Gustavo Lobo, Jr.**, was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Quinn:

Q. Will you please state your full name? A. Gustavo Lobo, Jr., President of Olivarria & Company, Incorporated, New York.

Q. Do you market Snow White sugar, the product of Puerto Rican American Sugar Refinery? A. In the United States, we do.

Q. How long have you marketed that product? A. Since 1942.

Q. Have you ever had any difficulty marketing that product? A. Not at all.

Q. Could you market more than you receive from the Puerto Rican American Sugar Refinery? A. Yes, indeed.

Q. How much more could you market, if you were
155 allowed to or permitted to? A. During the past five years, I could have marketed any amount that they shipped up, and I would say next year 150 to 200 thousand tons would present no difficulty.

Q. How much could you have marketed this year, Mr. Lobo? A. This year, 100,000 tons.

Q. Do you recall how much you did market? A. Approximately 60,000.

Q. Have you had any complaints about the quality of the sugar? A. No.

Q. Have you heard from any of the people to whom you distribute your sugar, any comment about the sugar? A. They always comment that it is as good a sugar as is made in the United States.

Q. Do you feel that way about it? A. I do.

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156 **J. M. Giles** resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Quinn:

Q. Mr. Giles, focusing your attention on the years 1942 to 1946, did Puerto Rican American Sugar Refinery experience any difficulty in getting raw sugar? A. Lots of it.

Q. Will you state what those difficulties were? A. There was rationing of gasoline which was necessary to transport raw sugar from any mill except Mercedita, to the refinery. There was Defense Transportation Administration which regulated the use of trucks which hauled the sugar.

At one time, there was a regulation that trucks could only travel loaded both ways, and we never had any refined sugar to send back to the raw sugar mills, so we couldn't do anything along that line. We had difficulty in
157 getting fuel oil to supplement the steam supply from the gas. Fuel oil was rationed. We had to get a permit from the General Supply Administration to buy fuel oil, and then we had to get it transported by trucks. The same difficulty about rationing of gasoline. And then, when we got the sugar refined in bags in our warehouse at the refinery, we had to transport it to the pier at Ponce, the same difficulty there with the rationing of gasoline. One time I remember the Coast Guard which handled the port

that we had the difficulties of transporting raw sugar from other mills to the refinery, which difficulties consisted in the rationing of gasoline, the rationing of tires, and the regulations by the Defense Transportation Authority, all of which regulated and controlled and made more difficult the transportation of the sugar.

Q. What difficulties did the refinery experience that you believe other refineries did not experience? A. In that particular—the transportation of raw sugar from the producing mill to the refinery?

Q. Didn't they have that difficulty? A. They may
161 have had on a very small scale, but nothing like ours.

Q. In other words, they had a source of raw supply more available to the— A. They had mills that produced their raw sugar practically to their refining capacity, or their refining allotments.

Q. Did the refinery, Mr. Giles, have any storage difficulties? A. Yes, sir.

Q. Will you recite briefly what those difficulties were? A. Well, that was due to the lack of sufficient shipping space. The sugar had to be stored continuously and in large amounts. At one time, as I mentioned, we had over a million bags of sugar stored in and around the neighborhood of Ponce, before we could ship it.

Q. Did you try to get materials, Mr. Giles, to build any additional warehouse space? A. We made some effort, but nothing came of it.

Q. You did make an effort to get material? A. Yes.

Q. You were unsuccessful in getting those materials? A. Completely.

Q. Did you buy additional warehouse space during the war years? A. We bought one warehouse and rented several others.

Q. With this additional warehouse space that you
162 purchased, did you still have sufficient warehouse space? A. We still were very short on warehouse

space, and on one occasion, we had to shut down the refinery because we had nowhere to put refined sugar.

Q. Despite the fact that you bought this additional warehouse space, what occasioned the difficulty in storing your sugar? What was the root of it? A. Because of the—the principal cause was that we could not get the shipping space to move it out of Puerto Rico.

Q. Did you try, through your agent, your marketer up here, to get shipping space? A. We tried everyway we could think of—through our agent in New York and through the San Juan representative of the War Shipping Administration, and through the steamship agents in Ponce and San Juan who operated as representatives of the War Shipping Administration. They carried on the actual clerical work, the handling of bills and documents necessary.

Q. Isn't it a fact that for the 1944, '45, '46, and '47 crops, the amount of sugar you could draw, the amount was determined by the Department of Agriculture? A. For 1946?

Q. '44, '45, '46, and '47. A. '44, '45, '46 and '47 was determined by the Commodity Credit Corporation.

163 Q. Was the amount of sugar that you could sell locally also determined by the Commodity Credit Corporation for those years? A. The amount that each mill, each raw sugar producer, could transfer to Puerto Rican refineries was determined by the Commodity Credit Corporation.

Q. Did you ever have sugar left on the dock during the war years of 1942 to 1946? A. We had sugar left on the dock on one occasion by a steamer that was announced to load a certain amount. We began to put the sugar on the dock, the steamer came and started loading, and then the captain came and said he had orders to leave at a certain hour, and he left the sugar on the dock, and standing on trucks which we had to take some other place and unload.

Q. Do you know who gave the captain sailing orders? A. He said it was the Coast Guard officers. That is hearsay. I don't know who it was.

Q. Were you forced to ship sugar from any other port than Ponce? A. No.

Q. You had difficulty shipping sugar out of Ponce? A. These difficulties I have been mentioning concerned the shipping of sugar through the Port of Ponce.

164 Q. Do you know from your own knowledge whether there were other ports more accessible where shipping would go into Ponce during the war years? A. The movement of the ships was controlled by the—well, I never knew exactly—I think it was the War Shipping Administration, but sometimes they said it was the Navy Department, other times they put the blame on the Coast Guard, which I believe was part of the Navy Department at that time.

Q. Was it easier to move sugar out of San Juan than Ponce? A. I presume it was. We never shipped any sugar out of San Juan, but I think all of the steamers came into San Juan, and lots of them did not come to Ponce.

Q. Mr. Giles, when would you say that the refineries started to emerge from the effects of war due to the shipping shortage, the manufacturing supply shortages, and things of that nature? A. Well, it has been a very gradual process, and some of the difficulties still exist, but the situation was alleviated to some extent in 1946 and to a little further extent in 1947.

165 Q. Well, Mr. Giles, will you consult the Federal Register? How much sugar did you ship in 1947? A. 60,820 tons.

Q. Is that all the sugar that you wanted to ship in 1947? A. No.

Q. Why not? A. Well, before the allotments were promulgated, we had entered into contracts—that is, the refinery had contracted to buy—approximately 85,000 tons of sugar which we had assumed we would be able to ship to the continent.

Q. You had planned to ship 85,000 tons of sugar in 1947? A. Yes. That is not an exact figure, because the contracts

were for the production of the mill, and the mill production was estimated. The total of those estimates was around 85,000 tons.

Q. But you only shipped approximately 60,000? A. A little over 60,000.

Q. Will you explain the difference between those figures? What stopped you from shipping 85,000 tons? A. Well, sir, we were told by Commodity Credit that we would have to reduce our shipments, hold them down to the figures given by Commodity Credit, the 60,820 tons.

Q. Did the refinery protest that treatment, sir?

166 A. Absolutely.

Q. Did you instruct me to protest to the Department? A. Several times.

Mr. Quinn: At this point, Mr. Examiner, I want to offer in evidence a letter dated June 10, 1947, addressed to me, signed by James H. Marshall, Director of the Sugar Branch. I would like to read into the record parts of this letter. [Exhibit 10]

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168 Q. Mr. Giles, making reference to the letter which I just read, I want to ask you if that was your understanding of what the policy of the Department of Agriculture was in 1947, that resulting in your shipping only

169 60,000 tons, instead of 85,000 tons to the continental market? A. That was one of the communications that came through on the subject and the result was that we were limited to the shipment of the 60,000-odd tons.

Q. Mr. Giles, isn't it a fact that all of the white sugar we are talking about today that is permitted under the Act—isn't it an historical fact that the performance of Porto Rican American Sugar Refinery was responsible for that? A. When the limitations were first imposed, as shown in that first order, allotting Porto Rican American Refinery 118,000-odd, and Guanica Central some 5,000 and something, there was at that time an allowance made for some raw sugar used directly, without further processing,

and that formed the basis for the limit of 186,000, or 186,033 tons of direct consumption sugar that could be shipped from Puerto Rico to the United States.

Mr. Quinn: Mr. Examiner, at this time, I would like to ask you to take judicial notice of a report * * * en-
170 titled "Sugar and the Caribbean Problem for 1942-43-44." * * * from the office of the Anglo American Caribbean Commission, which is a branch of the Department of State. * * * This report bears No. 202 at
171 the top.

Presiding Officer Gifford: All right. The Secretary will take official notice of it.

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Mr. Quinn: This is a report to the President of the United States by the United States section of the Anglo-American Caribbean Commission.

The Governor of Puerto Rico was a member of this Commission.

On page marked VIII at the top of the page:

"Sugar and the Caribbean Problem for 1942-43-44.
172 "Summary and Recommendations:

1. Shipping tonnage available for imports of essential supplies in the Caribbean area barely meets the needs of subsistence. War Shipping Administration and the War Production Board predict a deterioration of increasing severity, due to pressure of higher priority cargoes on fewer available ships."

On page marked IX, still under "Summary and Recommendations," I will read item No. 11:

"11. Because these islands are dependent on a single shipping pool and for other reasons indicated in this study, it is important to treat the Caribbean sugar problem on a regional basis, bearing in mind, of course, the relations of the regional problems to the global war economy."

I shall continue with No. 12:

"12. The following action is recommended:

(a) Substantial reduction of 1943 and 1944 sugar crops

* * *

(e) Substantial increase in local food production. * * *
(g) Speed-up program for more use of small boats to assist in carrying essential supplies to the islands."

173 On page 1, it is noted that Governor Rexford Tugwell had the dual capacity of Governor of Puerto Rico and member of the Anglo American Caribbean Commission.

On page 3, under the heading "The Caribbean Area Considered as a Whole," subsection (c) reads as follows:

"Shipping now allocated to the Eastern Caribbean is insufficient to maintain the normally low standard of living without a substantial increase in local food production."

Then, under (d), there is the following:

"The amount of tonnage allocated to the Caribbean for shipments to the United States, with the exception of vessels engaged in the movement of bauxite, is based on the emergency situation rather than on north- or southbound requirements. The military requirement are met, food and general supplies, and petroleum are moved to Caribbean destinations, but these last in quantities which do not represent average normal requirements, nor in fact more than the minimum possible for short-term supply. Ships allocated to the Caribbean area on the present emergency basis, do not bring to the United States, Canada, or the United Kingdom on their return voyages more than a limited amount of the surplus sugar, coffee, or other
174 higher priority commodities available for export.

On page 4:

"In Puerto Rico, another area hard hit by the shipping shortage, the value of sugar exports accounts for 62 per cent of the total."

On page 8, under the subtitle "Caribbean Sugar Pool," there is the following:

"Reduction of the Caribbean Sugar crop as suggested above will in effect create a Caribbean sugar pool designed to operate with the utmost economy of ships."

On page 9, marked "c":

"The areas from which point requirements should be drawn and surpluses carried, taking into consideration—

1. The necessity of absolute minimum utilization of ocean-going ships, and

2. The steps that should be taken to alleviate the economic burdens which the shipping shortage will impose and also the necessary steps to be taken to level out the incidence of the program on the various sugar producing areas."

On page 17:

"Any estimate of the sugar movement in 1943 must be considered with the utmost caution, since the shipping services which will be maintained, ships which may be diverted from time to time, and, in fact, the whole transportation movement within the Caribbean area depends overwhelmingly on the most economical use of ships for the war program. There are commodities which have been given a higher priority rating than sugar; many tons of these have accumulated in various ports of the Caribbean for lack of shipping. These must be moved in preference to sugar. To mention a few of these commodities—there are cooper concentrates, chromites, sisal, henequin, balsawood, mahogany and bauxite, heavy shipments of which will be made from the Guianas."

On the bottom of page 22 and the top of page 23:

"Puerto Rico, because of its geographical position in the Eastern Caribbean has been allocated a reduction shipping service as an emergency measure. Therefor the outlook for the balance of 1942 and for 1943 is not one that justifies belief that a restoration of adequate tonnage is probable. The importance of sugar in the economy of Puerto Rico may be judged when it is noted that sugar exports in 1939-40 represented 62 per cent of the total."

On the bottom of page 23 and going to page 24: "During the forepart of March the accumulation of stocks would exceed total storage capacity. By July 1st, the increase in the stocks on the above basis, shipments as estimated being deducted, would have reached one

million tons, or 464,000 tons more than present storage space could accommodate.

Additional storage facilities in Puerto Rico must be considered in relation to available shipping since certain building material must be imported."

By Mr. Quinn:

Q. Mr. Giles, you have heard the quotations that I have read from this report. Do you agree in substance with what is stated therein? A. I agree that all of those difficulties were actual factual difficulties, and more besides, that are not mentioned there.

Q. By virtue of the one recommendation in that report, Mr. Giles, was there a food planting program in Puerto Rico? A. Yes, there was.

Q. Did you have to sacrifice cane land for the planting of food? A. One year we were required to plant 7½ per cent of cane acreage in so-called "food crops," that is small crops, beans, potatoes, or things of that sort; and the next year we were required to plant 20 per cent of the cane acreage in such crops.

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179 By Mr. Antonsanti:

Q. Mr. Giles, you heard Mr. Roig's testimony yesterday? A. Yes.

Q. Did you hear that part of his testimony where he stated that he had practically no difficulties during the war? A. I did.

Q. Will you state what difficulties your refinery—Puerto Rican American—had during the war, what dislocations, that were not common to other refineries? A. The principal difficulty not common to other refiners, or at least not to anything like the same extent, was in the transportation of raw sugar from the mills that produced it to the refiner.

Q. Did you hear Mr. Roig testify that most of his refined sugar was shipped through the port of San Juan?

180 A. Yes.

Q. How did shipments out of the port of San Juan compare during the war period with shipments out of the port of Ponce? A. Well, that was more or less a military secret, but from general information and our own experience on incoming freight, we know that all of the ships coming to Puerto Rico entered San Juan. I think that is without exception, the ships carrying freight.

Q. Do you recall that they had a convoy system? A. They did.

Q. That all military supplies entered San Juan first? A. Not only military but civilian supplies entered San Juan and were unloaded at San Juan when destined to the south coast of Puerto Rico.

Q. By water, what is the distance from San Juan to the point where you ship? A. By water, I don't know exactly, approximately 150 miles.

Q. You have to go completely around the island to reach your port, San Juan? A. Practically half the circumference. Either way, the distance doesn't vary much whether you go east or west of the island.

Q. Would you say that in volume shipments out of Ponce port compared with San Juan shipments of
181 sugar to the continent? A. Well, they compared, but vary small in comparison with the shipments from San Juan.

Q. They were proportionately much smaller? A. Very much smaller.

Q. How did your production in amount compare with that of Roig—how many bags did you produce a day, approximately? A. The figures on this statement show the comparison. Our production was from three to four times as much.

Q. Considering the availability of shipping space, would you say that a refiner who had 13 to 15 thousand bags a day production, would have more or less difficulty in shipping the same than a refiner who had 5, 4, or 3 thousand bags a day production? A. The handling the larger production,

I would say, increased in proportion, and somewhat more than direct proportion. That depends on the storage facilities—the shipping facilities.

Q. The larger amount of sugar you had on hand to ship the more difficulties you had, is that correct? A. More, much more.

Q. And that was very much in proportion between you and Roig and Igualdad, 15, 5 and 6? A. Something like that. Igualdad and Roig were more or less along the same production.

182 Q. If you purchased no outside sugars for refining at your plant, would you have less dislocations than if you had to purchase a great deal of sugar from outlying mills? A. Less, yes, because we would have had no problem transporting the raw sugar to the refinery.

Q. Were the same controls in effect in Puerto Rico that we knew here in the mainland insofar as Office of Defense Transportation, OPA, War Production Board, etcetera? A. To the best of my knowledge they were, and some, I think perhaps in addition, because we were in outlying territory dependent on marine transportation.

Q. All these federal war agencies had branches or regional offices in Puerto Rico, did they not? A. I think they did. A great many of them did, anyhow.

Q. You are familiar with OPA in Puerto Rico? A. Somewhat.

Q. With War Production Board? A. They were both there.

Q. With Office of Defense Transportation? A. Right.

Q. They all controlled to a great degree your gasoline supply, your tires, and the number of necessary trips that you could make, and the use of your trucks? A. All of those things were controlled, completely, you might say, by the governmental agencies because we had to get permits for everything.

183 Q. You stated that you in addition, confining the production to Central Mercedita, an affiliate of the

Puerto Rican American Refinery and Central Bocachica also an affiliate, also purchased sugar from outside mills? A. Yes.

. . . . . .

Q. Were these mills large or small in comparison with the general run of sugar mills from Puerto Rico? A. The larger number of them had small production.

Q. Small production? A. But we bought some sugar from mills that had large production. We didn't buy all of their output.

Q. Did those mills—the majority of them from whom you purchased sugar for refining—have adequate storage capacity? A. One of them—I am not sure, but I mentioned it yesterday—one of them had adequate storage capacity for the night's run and the next morning, if we didn't move the sugar early, they called on us to send trucks and get it out because they had no more room for backing sugar.

Q. Would you say that the production of 2 or 3
184 of the mills from whom you purchased outside sugar for refining was geared, so far as storage was concerned, to your refinery? A. I think there were two or perhaps three whose total production of export sugar we had bought over a period of years, and they expected us to take care of their movement of sugar as they made it.

Q. As they made it? A. Yes.

Q. Did they have adequate warehouses to store two or three days' supply of sugar? A. Very little, or none.

Q. Do you know whether the Roig Refinery purchased outside sugars during the war years? A. I don't know positively but the record indicates that it was not necessary for them to purchase outside sugar to secure their volume of output. Whether under some other circumstances they found it convenient to buy outside sugar and ship their own as raw, I don't know.

Q. Mr. Giles, from your experience in marketing in the continental United States direct consumption sugar during the war years, do you believe that you would have had

any difficulty in marketing one hundred or 150 thousand tons in the continental United States if you were able to produce and ship the same? A. I think if we had
185 been able to deliver that amount of sugar in the continent, it would have been grabbed up very quickly.

Q. No matter what the quality of the product might be? A. Well, the quality we maintained, I think pretty good, but I think it would have been taken anyhow.

Q. Would that lead you, Mr. Giles, to believe that the continental deliveries during the war are a safe criterion for ability to market? A. Absolutely not.

Q. Did you have to slow down or stop your refinery at any time during the war years, and if so, when and on what occasion? A. I can't recall all the occasions, but it quite directly occurred that the refinery production was held down practically all through the crop. That is, less than the physical capacity to produce sugar. We couldn't produce when we had no place to ship or store.

Q. And you do recall that you did that on more than one occasion? A. More than one. Several.

Q. Mr. Giles, did you attempt to do anything with the powers that were—

Presiding Officer Gifford: I presume you mean those having control of the regulations?

Mr. Antonsanti: Right.

186 Q. —to make available more shipping space to your firm? A. We did frequently, constantly, throughout the crop.

Q. Did you correspond with those persons? A. I didn't get that last.

Q. Did you correspond, did you exchange letters? A. Yes.

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189 Q. Mr. Giles, have you prepared any memorandum today in connection with the various dislocations that you had during the war in connection with the manufacture,

shipping, storage, etcetera, of your shipments? A. To refresh my memory, I went over certain memoranda that I had made personally and took out some references, just to remind myself of what had been happening over this period of years, a good many details that I wouldn't recall just off-hand.

190 Q. Will you please give us the highlights of those memoranda? A. This begins on December with a note to the effect that Central Bocachica, one of those Centrals whose total production—

Q. What year? A. '41.

—was contracted by the Puerto Rican American Sugar Refinery, began grinding for the '42 crop. On December 9—that is, the next day—the Army ordered a complete blackout of the Central from 9 p. m. to daylight, and as the grinding of cane is a continuous process, this placed a serious obstacle in our way. A few days later, we obtained permission to install small blue lights and continue grinding at night. Naturally, there were not enough blue lights obtainable in Puerto Rico to supply the light needed in the mill and we got permission to paint the globes of the lights we were using, and in a few days we got sufficient paint to paint them, in a way, and went on grinding. On December 20, Congress re-enacted the Sugar Act of 1937 for three years more. That is, December 30, 1941. That continued the same controls that we had been operating under prior to the war—prior to our entry in the war. On De-

191 cember 22nd, ceiling prices were proclaimed for sugar. $5.25 per hundred weight for cane refiners. On December 26, the President signed the bill which was passed a few days before continuing the 1937 sugar Act for three years, and on December 30, the President signed a trade agreement with Cuba, reducing the duty on Cuba to 75 cents per hundred weight. On January 2nd, sugar quotas were proclaimed for the 1942 crop—that is, production quotas and quotas for shipment to the United States too. Puerto Rico was limited to 959,088 tons.

Q. Raw? A. Raw sugar, raw basis, to be shipped to Puerto Rico. The production for that crop was 1,146,584 tons, total production of Puerto Rico. Then, on February 21, we sent a telegram to the Bull Line, protesting the contents of that same letter which has been withdrawn, in which the Bull Line notified us that we could only ship 15,000 bags of refined sugar per week. We called their attention to the fact that our production was 75 to 85 thousand bags per week and that we couldn't find warehouses to store the difference and it brought us up to the problem of how soon we would have to close down.

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192 Q. What was your production then? A. 15,000 per day.

Q. You were limited to 15,000 bags per week in shipping? A. Yes. On March 14, we sent a telegram to the Puerto Rican Commissioner of Agriculture, mentioning a report that we had heard that government transports would be made available for transporting sugar, and requesting that the officials, whoever had control of any such shipment, would give consideration to the fact that we had 400,000 bags of refined sugar ready for shipment on that date, and were already faced with shortage of warehouses, that we might have to close down the refinery and if we did that would involve the closing down of the raw sugar mills at Mercedita Bocachica, Herminia, Caribe and Constancia, whose sugar we were taking in the refinery. On March 18, we wrote a letter to the Commissioner of Agriculture confirming at telephone message and to the effect that we now had 445,000 bags of refined sugar and had been unable to make any shipments since March 4th—14 days in which we had made no shipment and had been obliged to notify Central's Caribe, Constancia and Herminia, that we couldn't take any more sugar from them until further notice. On

193 April 14th, we received notice that the provisions of Tital II of the Sugar Act, the quota provisions, had been suspended. On May 8, 1942, the Refinery was

shut down with a stock of 610,259 bags of refined sugar on hand—shut down because we didn't have any place to put any more and hadn't been able to get rid of it.

Q. Mr. Giles, in order not to unduly burden the record, could you state that this same factual situation and all these dislocations and difficulties continued on through all the war years and up to 1947? A. It did continue, sometimes more, sometimes less, depending on the stage of the crop. At the beginning of the crop of course, we usually had empty warehouses, but they filled up.

Q. And during all those periods, there was complete abnormality? A. Absolutely. We had no control of anything about the movement of sugar.

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194 Q. Mr. Giles, did you attempt to do anything concerning your lack of storage space during all this time, and if you did, what measures did you take? A. As I recall the situation it was a continual attempt to secure facilities of one kind or another, secure supplies, secure, for instance, bags for sugar.

When we got the bags filled with sugar, find a place to store them when we could not ship, which was chronically the case.

Q. Did you hire any storage space that you normally didn't use. A. I don't recall the number, but there were several warehouses rented which we normally did not use, and two or three of them were very unsuitable for storing sugar, but the best we could do.

Q. And you purchased other warehouses? A. We purchased one at least during that period.

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195 By Mr. Quinn:

Q. Mr. Giles, you were in direct personal charge of all shippings for the refinery? A. That is right.

Q. This was true of the period 1942 through 1946? A. That is right.

Q. How did your bills of lading read for the war years? A. Destination and American property. We never knew where the sugar was going.

Q. Were you instructed to make out your bills of lading that way? A. Yes, sir.

Q. Who instructed you to do that? A. I don't recall the individual. Most of the instructions like that came from the War Shipping Administration through the same organization in Ponce that had been handling the Bull Line and the New York Puerto Rico Line, and the Waterman, those same offices handled the business as agencies for the War Shipping Administration.

Q. Therefore you didn't know what happened to Puerto Rican American Sugar after it left Puerto Rico during those years? A. Not very definitely for some time.

196 Q. You didn't know then, when that sugar was shipped, whether it reached your normal trade channels or not? A. No, we did not.

Q. Was any Puerto Rican American sugar lost at sea by virtue of the submarine blockade? A. That was a military secret at the time. We were told by the local representative of the Bull Line that a certain shipment had not arrived at the port—at an American port. That was the language he used and I asked him if it was sunk at sea by a submarine and he said, "I can't tell you."

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By Mr. Lee:

Q. How far is the refinery—the Puerto Rican American —from the ocean? A. In a direct line, the nearest point from the shore?

Q. We will say, the route you usually take for the transportation of sugar. A. To the Ponce pier?

Q. Yes. A. About ten kilometers. I don't recall exactly.

Q. What is the storage capacity at the refinery?

197 A. At the refinery?

Q. Well, the storage capacity that you normally use for the storage of sugar of your ownership. A. Maximum capacity, 600,000 bags of refined sugar when there is nothing else to interfere, during the crop we had to have some space for handling raw sugar. We couldn't put both kind in the same space, and we had to have some space for movement. We couldn't fill the warehouse right up to the door and go on with the handling of either material in the current production.

Q. Were not ample supplies of gasoline made available through the appropriate government channels for transportation of essential food products, including sugar? I don't mean exactly the moment when you wanted them, but I mean ample to transport essential food products. A. Eventually, there were supplies of gasoline to transport what we could get of supplies, food products, and other things.

It was rather frequently the case that those supplies were not available at a convenient time and it involved waiting and worry.

Q. Mr. Giles, in 1947, what was the amount of the raw sugars to which proportionate shares pertained and
198 which you refined? A. You mean the proportionate shares for the production? There were no proportionate shares assigned during the year. "Proportionate share," is the expression used by the production and marketing administration, previously the triple A, assigning to each cane grower the amount of sugar that could be produced from cane grown by him. During these years of suspension of quotas that proportionate share was in the discarded, and all cane available could be ground.

Q. The growers received payments, did they not? A. The growers received payments after a while.

Q. They received payments on all they produced? A. Yes.

Q. Was not all they produced— A. That is, I presume they did. Those that ground cane at Mercedita received payments, I know.

Q. Was not all cane produced there proportionate shares, then? A. Yes.

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199 Q. How much did that sugar amount to that you refined in 1947? A. You mean how much of that sugar we refined in 1947?

Q. Now what was the quantity, how many tons did the sugar amount to that you refined in 1947? A. For shipment to the continental—

Q. No, for sugar—pardon me. A. The total amount?

Q. Not the amount of sugar that you shipped to the continent. What was the total amount of sugar that you refined to which those proportionate shares attached. A. All of the sugar we refined was produced under that condition.

Q. And how much was that? A. Could you—

Q. In tons. A. Your question is how many tons of raw sugar did we refine?

Q. That is stating it another way. Put it that way: How many tons of your own raw sugar were refined in 1947? A. Of our own raw sugar? You mean, the Puerto Rican American raw sugar?

200 Q. I am not trying to fence with you, Mr. Giles. Let me see if I can make it clear. A. I am trying to understand your question, frankly. I think there is some confusion about this matter of proportionate shares.

Q. There apparently is. I understood you to state a moment ago that all the sugar of producers had received payments, were entitled to payments, and that might be described as proportionate share sugar. Now, you have certain mills that were affiliated, and you refined certain sugar from those mills. How much of your refined sugar of Puerto Rican American is sugar that comes from growers who supply your raw mills and that can be described as proportionate share sugar? You have a total amount of refining. I want to know how much of that refining comes

from purchased sugars and how much of it comes from what might be called your own sugars. A. I see. Now, we can drop the matter of proportionate shares, because, as I stated, all of the sugar produced in Puerto Rico was subject to that provision of proportionate share.

Presiding Officer Gifford: That isn't the question. The question is how many tons from your own production and how many tons from other production.

The Witness: That is what I am trying to get
201 straight. A. Our own production for the year 1947 was 64,490 tons, I think, of raw sugar.

By Mr. Lee:

Q. How much of your refined sugar was that which you acquired by purchase from other than your own affiliates? A. As I stated yesterday, we had contracted—that is, the refinery—had contracted from raw sugar mills, including Mercedita, 85,000 tons more or less of raw sugar for shipment to the United States and 23,000 and something of local consumption sugar.

Q. Mr. Giles, I am not— A. Let me go a little further. I am here to tell the whole truth.

Q. Go ahead. A. When the Commodity Credit Limited our refinery shipments to the United States to 60,820 tons raw value, the refinery had in its possession, in warehouses along side the refinery, sugar from Central Pellejas, which we had to turn back to Central Pellejas, and we shipped it as raw sugar. There was also a small amount of sugar from Central Barbara, which we had to turn back to them and they shipped it as raw sugar, and then having reached the limit of the allowable shipments to the state, the refinery was shut down and Mercedita continued to grind cane and bag raw sugar which was shipped to the States in
202 the amount of 15,575 tons I think it was of raw sugar shipped by Central Mercedita to the States.

Q. Mr. Giles, let's try it again and see if we can get the information.

How much sugar did Puerto Rican American refine in 1947? A. How much sugar did Puerto Rican American refine?

Q. How much has it refined in 1947? A. 1,656,000 and I don't remember the hundreds exactly, bags of refined sugar were produced.

Q. Will you convert that to tons, please, short tons, refined value?

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A. The figures for 1947, in pounds raw value—do you want it in tons?

Q. The government's figures are in short tons refined value, are they not?

Mr. Davis: Short tons raw value.

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203 A. I can divide this number by 20 pretty easily. 62,446 tons of Mercedita shipments and 39,625 tons from outside—short tons, 2,000 pounds.

By Mr. Lee:

Q. Now, those two figures added together constitute the total amount of sugar that Puerto Rican American refined in 1947? A. Yes.

Q. Is the sugar that you referred to—is the Mercedita sugar the only raw sugar that was refined that was not acquired by purchase from non-affiliated mills? A. By non-affiliated mills, you wish to exclude Bocachica and Mercedita. Bocachica was not grinding—in 1947, so the 60-odd thousand tons is the sugar that was purchased by the refinery from raw sugar mills affiliated with the refinery.

Q. Would you state the corresponding figures for 1946? A. For 1946, in short tons, 2,000 pounds, from Central Mercedita and Bocachica combined, 57,114 tons, and from outside, 27,367 tons.

Q. And for 1945? A. For 1946 from Mercedita-Bocachica, 59,094 tons, and from outside, 24,206 tons.

Q. Mr. Giles, how far back do the figures that you
204 have before you run?

Mr. Quinn: I didn't hear the question, sir.

(Whereupon, the question was read.)

A. The tabulation runs back to 1926 when we began refining.

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206 Q. Mr. Giles, the figures that you have given for the years 1946 and 1947 you state were in short tons, raw value? A. Raw material received by the refinery.

Q. Was it all refined by the refinery? A. Yes.

Q. And the number of tons of refined sugar could be ascertained from the figures you have given by using the usual conversion factor? A. Approximately. The
207 conversion factor is conventional and the actual yield varies from year to year, and from month to month.

Q. What is that conversion factor? A. 1.07.

Q. Your figures there are on raw values? A. Yes.

Q. Would you proceed to give the corresponding figures for the years going back to 1935?

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208 Q. We know you gave '46 and '47. Suppose you start with '45 and go back. A. '45, from the Bocachica Mercedita, 59,094 tons. From outside, 24,206 tons. In the year 1944, from Mercedita-Bocachica, 47,843 tons, and from outside 16,549 tons.

In 1943, from Mercedita- Bocachica, 59,740 tons, and from outside, 15,659 tons.

In 1942, from Mercedita-Bocachica, 59,241 tons, and from outside, 10,231 tons.

In 1941, Mercedita-Bocachica, 50,909 tons, and from outside, 46,947 tons.

In 1940, from Mercedita-Bocachica, 50,206 tons, and from outside, 67,842 tons.

For 1939, Mercedita-Bocachica, 49,806 tons, and from outside, 43,013 tons.

For 1938, Mercedita-Bocachica, 60,594 tons, and from outside, 37,218 tons.

For 1937, Mercedita-Bocachica, 59,959 tons, and from outside, 63,469 tons.

In 1936, from Mercedita- Bocachica, 57,399—call it 57,400, because the fraction was more than one half—nearer to the even 400 than 399. From outside, 63,227 tons. For
209 1935, Mercedita-Bocachica, 48,922 tons, and for outside, 68,753 tons. * * * I would like to observe that those figures I am giving are a result of division of the figures before me and if there is a slight discrepancy, it is subject to correction.

Q. Well, I think a division by 2 is probably simple. A. It is fairly simple.

Q. Mr. Giles, the sum of the 2 figures that you have given for each year, when adjusted by the conversion factor, would give the total amount of refined sugar produced by Puerto Rican American for that? A. I should, yes.

Q. Mr. Giles, these outside miles from which you purchased have been stated in the record. Would you state approximately how far each one is from your refinery—just approximately? A. The nearest is about 6 kilometers.

Q. What mill is that? A. The nearest was Bocachica. Bocachica didn't operate in 1947, but prior to that it did.

Q. Now, the others? A. The next nearest is Constancia, Ponce, which is about 12 kilometers, I think, and from that we run on up to—I really don't know exactly which
210 is the farthest.

Q. Would you just mention them all and approximately how far? A. Herminio, located at Villalba, is somewhere near 18 or 20 kilometers. Pellejas is up in the mountains and by road it is over 50 kilometers.

Santa Barbara is—I think it is a little more than 50 kilometers, it is in the mountains over a very crooked road.

San Francisco is something like 35 kilometers, I think. Eureka, near Mayaguez is something more than 50 kilometers, I suppose about 60.

Cortada, east of the refinery is about 14 or 15 kilometers. Aguirre is, I believe, in the neighborhood of 30 kilometers. Caribe was a little closer, call it 20 kilometers, I suppose. Caribe has disappeared in the last year.

Guamani is further than Aguirre, call it 20 kilometers Machete is a little further east—between 35 and 40 kilometers.

Lafayete is still further east, it must be around 45 kilometers.

Cambalache, on the north coast about, I suppose 90 kilometers over the mountains. I believe we got some sugar from Plazuela at one time. That is also on the north
211 coast and approximately the same distance as Cambalache.

By Mr. Lee:

Q. Is that all, Mr. Giles? A. That is all that I recall right now. We didn't every year buy from exactly the same list of Centrals. They varied from time to time.

Q. Would you, just to help counsel out with their briefs, state what portion of a mile a kilometer is? A. Approximately five-eighths.

Q. Five-eighths? A. Five-eighths, of a mile.

Q. Thank you. Mr. Giles, in any of the last six years has Puerto Rican American ever failed to market in the continental United States all its refined sugar that it had available for marketing in the continental United States and did not market for local consumption in Puerto Rico? A. I can't answer that off hand. If you will give me time to look it up I think I can give the answer.

Q. Mr. Giles, would it help you if I stated it this way: Did you not, during the last 9 years, market in the continental United States all your refined sugar for the year

that you did not market for local consumption in Puerto Rico?

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212 A. The point that has me a little confused is whether or not it was shipped and delivered in the calendar year. If you want to take the 8 year period as a whole, I can answer your question from memory.

Q. Let's take it as a whole? A. We did sell all of the refined sugar we produced in the last 8 years, either in the States or locally, except the stock that we now have on hand for delivery to local trade. It hasn't been disposed of yet.

Q. You imply, Mr. Giles, that refined sugar produced in some years for the United States was not marketed until shortly after that year was over. How long would that be? A. That is the point that had me confused as to whether or not the production and the delivery for the calendar year coincided. I recall—

Q. Was it a short period? A. I recall that there were one or two years when sugar was shipped to the States in December for charge against the next year's quota—

213 the following year's quota—and I also recall one instance—it is outside of this period though, it is further back, so I suppose there is no need to mention it.

Q. Would it be correct, Mr. Giles, that all your refined sugar, refined in any year and not marketed locally in Puerto Rico, was marketed in the United States either in that year or very shortly thereafter? A. Fairly shortly. I think I remember that one year the last shipment of the previous year's crop was not made until about the end of February on account of shipping shortages, but in general, I can say that it was marketed within a reasonably short period, under the circumstances.

Q. Would it be correct to say that substantially all the sugar refined at your refinery in any of those 8 years and not marketed locally, was not marketed in the year in which it was refined? A. That all of it was?

Q. Substantially all. A. The greater part of it, yes.

Q. Well, the greater part—is that approximately 85 percent, or 99 percent? A. The percentage I don't quite recall, but as I mentioned, a few minutes ago, there is only one case that I remember now, where the final shipment of the previous year's crop was completed toward the latter part of February.

214 Otherwise, in other years, I think the shipment was completed during the calendar year.

Q. How much was that one shipment, approximately? A. I don't have those records here. It might have been anywhere from 15 to 50 thousand bags.

Q. Do you recall what year? A. No, I don't. It was one of the war years.

Q. That figure you gave was bags, not tons? A. Those were bags, yes.

Q. Mr. Giles, in any of the last 8 years, has Puerto Rican American ever failed to refine all its affiliates' raw sugar? A. As I mentioned a while ago we had shipped this year, 1947, 124,600 bags of raw sugar produced by Central Mercedita.

Q. That was because your— A. Because of the limitations on shipments of refined sugar.

Q. Now, Mr. Giles, it appears that each year you have been able to refine—under or subject to the quota limitations—all the raw sugars of your affiliates. It also appears that each year during this war period all the sugars that you refined from any sources were marketed in the United States that year. You have testified at great length to numerous difficulties in refining and marketing. Those difficulties, is it correct, were not sufficient to prevent

215 you from refining and marketing in that year all the sugar that you could lawfully refine, and all the sugar that you had available for marketing in the United States?

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Mr. Lee: Does the witness understand the question?

The Witness: Yes, I believe so, but I can't agree quite, because I was just looking to see if I could find some data

concerning the year when—the previous year, previous to this year—when we had to ship raw sugar produced by Mercedita. I think it was 1945. I don't find any note concerning a previous shipment of raw sugar—that is, prior to 1947—of raw sugar, but I do recall that—I think it was in 1945—that we had to ship some raw sugar produced by Central Mercedita.

Q. Was the reason that you shipped some raw sugar that you had purchased outside sugars and refined them and so had Mercedita raw sugars in excess of your refining quota? A. I don't recall it exactly, and I don't believe I could answer that correctly without looking up records which I don't have here.

Q. Is it correct that, notwithstanding all these dif-
216 ficulties you have testified to at tremendous length, that you nevertheless were able to market, in the United States, all the refined sugar that you had to market there? A. All of the refined sugar that we produced has been, as I stated before, from export sugar quotas—raw quotas—has been eventually marketed in the United States.

Q. And it has been marketed in the United States notwithstanding all these troubles of transportation you talked about, and plant breaking down, and government orders, and ships, and blackouts, and all the rest of it? A. Notwithstanding all these difficulties—

Q. In other words, you did a good marketing job, not withstanding the war annoyances? A. The marketing job was no particular trouble. The transportation was the trouble, and as I was saying, the refined sugar produced from what we call export quota raws, did eventually reach the United States, except two lots, which, I believe, were sunk at sea. The difficulties were not in the fact that they didn't get here eventually but we were balled up here with lack of space for storage and for shipping and could not produce as we normally would have produced.

Q. Would the figures shown in Exhibit A to the
217 Notice of Hearing as entries during the war years, for Puerto Rican American refinery, have been any

different if the difficulties you enumerated at great length had not existed? A. I think they would have been decidedly different.

Q. How would that be? A. I think we would have been able to secure and market considerably more sugar—secure and ship considerably more sugar.

Q. Did you not testify that you marketed all the refined sugar that you did produce in the year? A. Yes, sir. That was all marketed, and we could have marketed considerably more as was testified yesterday by Mr. Lobo. We could have marketed much more sugar if we could have produced and delivered.

By Mr. Lee:

Q. Do you mean by that that there was a demand for more sugar? A. I understand that there was a demand for considerably more sugar.

Q. And that if you produced more sugar and refined more sugar, could have acquired more sugar, you could have met that demand? A. Not all of it.

Q. Some of it? A. Some of it.

218 Q. But as to the sugar that you did acquire by purchase or acquire from your affiliates, or from all your usual sources of supply, and refine, you were, notwithstanding these difficulties, able to market it in the United States? A. I think I have answered that.

Q. Was the answer yes? A. I think so. You know if you clock a runner at the beginning of a race after the others are half way through and then tell him to get up and go on and "see what you can do," he is not likely to break the tape first.

Our difficulties are—

Presiding Officer Gifford: I think this question has been pursued so definitely in the record, that notwithstanding all the obstacles, eventually your quota was marketed.

The Witness: The obstacles affected our ability to produce and ships, not our ability to market.

Presiding Officer Gifford: I think the record clearly shows that.

Mr. Lee: Thank you.

By Mr. Lee:

Q. Mr. Giles, one more question: Did the Commodity Credit Corporation, ever, one application of Puerto Rican American, refuse to release raw sugars of Puerto Rican American to it for refining within the limits of the
219 allotments under the CCC contracts? A. The Puerto Rican American had no raw sugars until it bought them. The Puerto Rican American made no application for release of raw sugar. It was the producer of the raw sugar who had to make the application for the release for disposal to a refinery in Puerto Rico.

Q. Mr. Giles, were any raw sugars that Puerto Rican American desired to acquire and refine, and for which an application for release to Puerto Rican American for refining was made to the CCC, ever refused by the CCC? A. Yes, sir.

Q. Will you state instances of that—let me qualify that as I did my original statement—when the sugars that it refined would have been within your allotments under the CCC contract? A. The allotments were made under the CCC contract. That is, the contract provided that all raw sugar was sold to the CCC. Then in the second paragraph, it is provided that on application of the producer, which is the raw sugar mill, such amounts as approved by the CCC would be released for sale to a Puerto Rican refiner, and to be specific the application of central Mercedita for release of its total production to a Puerto Rican refiner was refused and as I stated a while ago, Mercedita was obliged to ship 124,600 bags.

Q. Was it ever refused when the amount of the sugar, if refined, would ever be within the allotted amounts
220 under CCC contracts? A. The amounts allotted under all the CCC contracts were dependent on the ap-

plications submitted by the producers, and the application submitted by Central Mercedita, was, according to the estimates of production, at the time the application was submitted, not in excess of the allotment for shipment to the United States.

Q. Mr. Giles, let me try once more, and see if we can break the tape this time.

You referred to 1947. There were 130,000 sold tons of refined sugar which were allotted among the refiners. The releases of the CCC were scaled to fit those allotments. Was there ever a release refused Mercedita, which would have fitted the allotment? A. The Mercedita request for release was sent into Commodity Credit Corporation early in the year. I think it was in February or maybe it was March. The definite allotments or releases of raw sugar for refining in Puerto Rico were not made until toward the—were not notified to us officially until the later part of May. At the time the Mercedita application was sent in, the estimated total production for Central Mercedita was 60,000 tons, and that was less than the amount eventually allotted to the Puerto Rican American refinery for shipment to the States.

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221 Redirect Examination

By Mr. Antonsanti:

Q. Mr. Giles, isn't it true that although you were able to market all the refined sugar that you produced your difficulty was not in marketing, but it was in producing more? A. I think I made that statement: That the marketing was not the problem. It was the producing, the refining; or obtaining supplies for refining, and the transportation.

Q. Consequently, your difficulties hampered your production, not your marketing? A. I used the illustration about the man in the race because I think it is applicable. Our production was choked in the early part of the game. The sugar that we did not produce, we could not produce on account of restrictions, we could never market no matter how much the market was calling for.

Q. I suggest to you, Mr. Giles, that there were cases where you could have obtained more raw sugar and didn't, is that correct? A. There were cases where we could have obtained more raw sugar if we could have obtained the transportation and had been able to dispose of the
222 refined product and make room for the incoming raw sugar.

Q. Do you recall the Lafayette Case, one of the Centrals from whom you purchased outside sugars? If you recall it will you explain it? A. I recall some negotiations with Central Lafayete in obtaining raw sugar. At the time—that was during the emergency period—Lafayete was shipping not through their normal port Arroyo, but through Jobos, and central Aguirre port, and was allowed four cents by Commodity Credit extra payment on account of the longer haul from the mill to the port. We proposed to Lafayette to buy a certain amount of sugar from them for refining. They replied that they would be glad to sell it to us if we would pay that four cents or if Commodity would continue to allow that four cents to them for the extra transportation provided they made the delivery at Mercedita for the refinery.

223 Q. Then I take it that they would have been penalized by four cents? A. That was the attitude if the Commodity replied they would not make an allowance. Then if LaFayette delivered the sugar to the refinery, they would have four cents less income than they would by shipping it through the Port of Jobos.

Q. Do you recall whether that was done to discourage the transportation of raw sugar inland in Puerto Rico? A. Well, I know that it was done. I wasn't at the end where the purpose was clear.

Q. But it had the result? A. It was the result.

Q. Of eliminating your production. It had that result? A. It had that result of limiting our production, because we didn't get the raw sugar and couldn't refine it.

Q. Do you recall an incident with Aguirre Sugar Company or Cordalo, affiliate of Aguirre, where you were not able to get a release—they were not able to get a release of their raw to refine at Puerto Rican American? A. That was early this year. We made a contract with the owners of Cordalo to take a certain amount of their raw sugar for refining and when we had taken a considerable part of it, we were notified that our allotment for shipment to the States was so much, and in view of the fact that our own production and other contracts exceeded that amount allotted, we arranged with Aguirre to cancel the
224 remainder of that raw sugar contract, and the sugar did not come to Mercedita.

Q. Do you remember of a case in Aguirre where a refusal was made of the transfer of sugar until Aguirre was able to prove it had no bags? A. There was such a case. We got an addition of 1,500 tons to the export—direct consumption export allotment due to that circumstance.

Q. Had Aguirre had enough bags, you wouldn't have gotten that sugar? A. If Aguirre had been able to ship the sugar, they would not have turned it over to us, the export quota.

Q. What year was that; do you recall? A. That was this year.

Q. This year, 1947? A. 1947.

. . . . . .

By Mr. Garcia-Mendez:

Q. Mr. Giles, you testified to numerous difficulties during the war years, and you referred to gasoline rationing. A. Yes.

225 Q. Wasn't it a fact that the OPA gave preference for the handling of sugar cane and sugar all throughout Puerto Rico? A. I don't know just how much preference they gave, but they did arrange for rationing, for supplies to be furnished to trucks hauling cane under the rationing regulations.

Q. Didn't that regulation provide to give all gasoline necessary for the handling of the cane and the sugar?

. . . . . .

A. The supply was eventually sufficient to move—as I recall, there were years, though, when not all the standing cane was cut. It was not all ground.

Q. But it wasn't because of lack of gas, was it? A. Some of it, I think, was. It slowed down the transportation. They couldn't get it into the mill in time. The mill couldn't continue to grind cane for one or two Colnas who delivered two or three tons a day.

Q. Was that regulation equally applicable to all other refineries? A. I presume it was.

226 Q. The regulations of the Office of Defense Transportation, weren't they equally applicable to all other refineries? A. Supposedly.

Q. The shipping transportations, weren't they equally applicable to all other refineries? A. I presume they were, but the effect on a concern that has a small amount of transportation is much less, involves much less difficulty than when the amount to be transported is three or four times as great.

Q. Don't you think it should be proportionate to the amount to be shipped? A. No, the smaller production, in the first place, doesn't have the problem of storing sugar pending transportation, not to the same extent, and then it doesn't have the problem of transporting a large amount of sugar in a short time while the steamer is loading.

Q. Well, you would have a proportionate amount of trucks to haul it, wouldn't you? A. Not necessarily.

Q. Now, then, how do you explain that while other refineries shipped into continental United States not only what they used to refine in the previous years, but sometimes twice as much; how do you explain, if they could overcome those difficulties, you could not overcome them?

A. I think I have just explained it. They had much

227 smaller quantities to handle. To move 10,000 tons

of sugar doesn't involve the same complications as moving 25,000 tons.

Q. Well, in the case, for instance, of Igualdad in 1941, Igualdad shipped 13,017 tons into continental United States against 79,237 Puerto Rican American. That is about one-sixth. Igualdad about one-sixth as much as Puerto Rican American, while in 1947, Igualdad shipped 29,965 against Puerto Rican American 67,000, or about 50 per cent Igualdad to Puerto Rican American. How could you explain that in view of your difficulty, that Igualdad could go up to twice as much while Puerto Rican American went below its 1941 shipment? A. I think the statement I have made explains it. It is much easier to increase from 13,000 to 29,000 than it is to maintain 79,000, particularly when the other Centrals take a bite out of the quota formerly assigned to the Puerto Rican American sugar refineries. Not only we couldn't handle the sugar physically, but we couldn't get the allotment.

Q. That is in spite of the fact that the difficulties and war regulations were equally applicable to all? A. Equally applicable, but the incident of those regulations on your concern was not the same as on the larger concern.

Q. Doesn't that account for ability to market? A. No, sir. That is ability to have transportation facilities
228 which were not under control of any one in Puerto Rico except as delegated from somewhere else.

Q. The regulations regarding planting of 7½ per cent for other crops, and 20 per cent for other crops in certain years, was it equally applicable to all producers? A. I suppose so.

Q. It wasn't applicable to Puerto Rican-American, was it? A. No.

Q. Was it applicable to Igualdad? A. Igualdad, at that time, I don't recall, but at the beginning, I understand Igualdad was the mill and the refinery. Later, I think it was separated to—call it the Western Sugar. Igualdad

certainly had the regulations applied to their canegrowing, but the Western Sugar probably did not.

Q. You testified, Mr. Giles, that you purchased some of the raw sugar from other raw sugar companies. A. Yes.

Q. And among them you referred to Constancia? A. Constancia Ponza.

Q. How did you haul that sugar to Puerto Rican-American, by railroad? A. No, by truck.

Q. What about LaFayette; did you haul by truck or train? A. LaFayette, when we would buy the sugar,
229 I think all of it was hauled by truck.

Q. What about Cambalache? A. Cambalache, by truck.

Q. All by truck? A. I think all by truck. There may have been some, a few, railroad cars. My recollection is that nearly all, if not all, was by truck.

Q. What about Plazuela? A. Plazuela was, as I remember it, by truck.

Q. Did you have connections between Plazuela and Puerto Rican-American? A. Yes.

Q. Why didn't you use the railroad. A. The same reason, the question of cost came in.

Q. Did you have railroad connections with Cambalache? A. Yes.

Q. Did you have railroad connections with Eureka? A. We could have had the Eureka, but they preferred to engage the trucking on sugar.

Q. What about LaFayette? A. LaFayette had no direct connection.

Q. Couldn't you buy some of that sugar from other mills which had railroad connections with you? A. Perhaps, but the question of cost always came in.

Q. What about Central Rufina? A. Central Ru-
230 fina is fairly close.

Q. How far is it? A. Closer than San Francisco.

Q. How far is it? A. I don't know.

Q. You say San Francisco is about 35 kilometers? A. Then Rufina would be about 30.

Q. Do you have railroad connections with Rufina? A. Yes.

Q. Would the difference in cost be very material? A. In a good many cases quite material. Also the shortage of railroad cars. As you probably know, most of the railroad cars were engaged in taking sugar to San Juan, and were used as warehouses after they got to San Juan for several days. There were not available for transportation of sugar on the South Coast.

Q. Now, you referred, Mr. Giles, to the fact that there were Army regulations as to the use of lights on cars and that the local law required— A. I think that regulation was Coast Guard.

Q. Coast Guard. Wasn't it a fact that all local laws or regulations were left in abeyance in every case in which either Coast Guard or Army regulations or anything in favor of the war effort was necessary? A. They were left in abeyance some times, and sometimes they were disregarded and violators didn't get caught.

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Q. As a whole, weren't they left in abeyance? A. In general, I would say yes.

Q. In your statement, you said that on February 21, 1942, you only had 15,000 bags of refined sugar to be shipped by Bull Insular Line; is that correct? A. No. My statement was that the Bull Insular Line had notified us they would not accept more than 15,000 bags per week. We had a lot more than that.

Q. Was there any other shipping company with whom you were shipping your sugar at that time? A. We had to ship on the ships that were notified to us by the War Shipping Administration. There were others.

Q. Weren't there other ships beside the Bull Insular Line ships? A. There had been other lines operating. At At the time I speak of, no steamship line was operating on its own account. They were operating as agents of the War

Shipping Administration and they signed the documents in that way.

Q. When you received that advice from the Bull Insular Line, did that last long, that you only had 15,000 bags, or could you eventually ship much more than 15,000 bags? A. Eventually, we shipped considerably more. That was on February 21. On March 14, we had accumulated 400,000 bags. On March 18, we had accumulated 445,000 bags.

Q. On May 8, you had accumulated about 600,000
232 bags? A. 610,000 something.

Q. Did you eventually ship all that sugar? A. We eventually shipped all that sugar, but it wasn't so easy to continue refining and storing after we had accumulated that much.

Q. What was your storage capacity, Mr. Giles? A. As I stated, 600,000 bags of refined sugar provided we had nothing else to store, but during the operation period, during the crop, we could not use all that space for storing refined sugar. We had to receive raw sugar and had to have a little elbow room to move around.

Q. That was your own storage capacity in your own warehouses? A. Yes.

Q. Couldn't you rent warehouses? A. Excuse me.

Q. I am sorry. A. Including warehouses that we owned at Ponce Port.

Q. What about rented ports? A. In that 600,000, there were no rented warehouses.

Q. Could you rent warehouses at Ponce? A. We did.

Q. How much storage? A. At one time we had a little over one million bags stored.

233 Q. You were always able, then, to rent storage?

A. At that time we were able to rent enough storage to take care of one million bags. Later, those warehouses were occupied by other materials and we couldn't get them.

Q. What about other warehouses? A. Other warehouses did not exist.

Q. Didn't exist. Didn't you ever try to build new warehouses? A. We tried to get materials to build a new warehouse and our request for priority was delayed and finally refused.

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234 Q. Mr. Giles, you stated that you went down into negotiations with LaFayette for the purchase of some of their sugar and there was a 4 cent differential, and that was why you didn't go ahead into the negotiations? A. That was the allowance made by the Community Credit for extra transportation cost to LaFayette, and then LaFayette people advised us that the Commodity Credit declined to make that allowance to them if the sugar was delivered at Mercedita. And that was the final straw that broke down the negotiation. We didn't get the sugar.

Q. Did you get from some other source the sugar you planned to get from LaFayette? A. No.

Q. Wasn't it worthwhile to pay the 4 cents and get the sugar?

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235 The Witness: I can't answer that "yes" or "no". I don't have the calculations before me, but the fact is that we decided not to complete the arrangement on that basis.

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236 **Juan E. Mayoral** was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Antonsanti:

Q. Will you give your name to the reporter, please? A. Juan E. Mayoral.

Q. Will you state your occupation? A. Engineer.

Q. Are you connected with the Puerto-Rican American Sugar Refinery, and how? A. Yes. I have been gen-
237 eral superintendent of manufacturing corporations of the Puerto Rican-American Sugar Refinery since 1933.

Q. Are you a graduate engineer? A. Yes. I graduated from the Massachusetts Institute of Tec nology in chemical engineering in 1929.

Q. State your experience. A. In 1930, I obtained my Master of Science in the profession from the same institution. From the time I left the Institute of Technology, I worked for three years in the field of metals and alloys at Driver-Harris Company at Harrison, New Jersey, and since 1933, I have been connected with the Puerto Rican-American Sugar Refinery.

Q. Have you been familiar with its operations since that date? A. Yes. I have been in charge of production and supervising, full supervision of the mechanics of maintenance and chemical work.

Q. Mr. Mayoral, I believe you testified here in 1938 or 1939 as to the capacity of your refinery at that time.

Will you give us that figure? A. I testified in 1938 that our refining capacity was 700 tons per day, but that we were making enlargements to increase that capacity to 800 to 850 tons per day.

Q. You were then making those enlargements? A.
238 In 1939, we produced a record which was requested of all producers by mutual agreement covering ten days of operation in which we averaged over 850 tons per day. That was our capacity in 1939 and so it is in the records of this department from certified copies of the production record.

Q. Since that date, 1939, have you made any improvements to your refineries? A. Yes. Today, due to improvements and enlargements, we have a capacity that I estimate conservatively at at least 10 per cent over the 1939 capacity.

Q. Now, one more question, Mr. Mayoral. During all these war years, what factor principally limited your production? A. We had a number of factors that were covered by Mr. Giles. There were many. But the main factor was the difficulty of shipping sugar, which filled our warehouses and consequently made us slow down. The other major factor was the inability to obtain sugars caused by the same factor. In other words, if we knew that we were unable to ship sugar, we couldn't contract to receive sugars that we knew we could not receive nor ship. I would like to expand on that, that these mills that we buy sugar from, in their great majority, do not have storage capacity for the raw sugars. For years, they have been manufacturing their sugar, putting it on the truck right out from
239 their scales, and shipping it to us, so that they have practically no storage capacity, and they would sell us the sugar, but one of the conditions was that we would have to take this sugar, say, as it was produced, which we couldn't very well do if we had our warehouses full.

Q. Had you not been limited, then, by these difficulties, would you have been able to produce and ship a great deal more sugar than you did during the war years? A. There isn't any question about it.

Q. There is nothing inherently wrong with your refineries that would limit you, outside of storage space and shipping trouble? A. The refinery is exactly the same equipment, very well kept up, that we had in 1939 when we averaged 850 tons per day in that run that was made to prove the operating capacity, except that it has been enlarged by about 10 per cent.

Q. Have you examined the figures in Exhibit A, presented by the government? A. Yes, I have.

Q. Pardon me. Not Exhibit A, but Exhibit No. 4, I think it is. Will you please refer to it?

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240 Q. Do you have it before you? A. Yes, I have examined it. I have it before me.

Q. Is the figure for the sugar in that exhibit corresponding to Puerto Rican-American a correct figure? A. The figure is correct as far as arithmetic and as far as corresponding to the number of days it states. However, I do not believe it is a correct reflection of the capacity of the refinery.

Q. Why? A. Because all during 1947 as well as during other abnormal years, we were slowed down.

Q. So, this figure in Exhibit No. 4, Puerto Rican-American, reflects the five-day run, the slowed down process? A. That is correct.

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Cross Examination

By Mr. Garcia-Mendez:

Q. Mr. Mayoral, do you mean to say that since Plazuela has no storage— A. I said almost.

Q. Now, let us go to Plazuela. Does it have a large
241 storage warehouse? A. Yes, I think Plazuela has.

Q. What about Cambalache? A. Cambalache has.

Q. What about Aguirre? A. Aguirre itself, has, but Cordalo, an affiliate of Aguirre, made it very clear to us that we had to take the sugar daily, and I had calls from Mr. Rice, and from the man at Aguirre—I don't recall his name now, but he is the manager at Aguirre—almost daily warning me if we didn't take the sugar away, they would have to dispose of that sugar in a different manner.

Q. What about LaFayette, do they have warehouses? A. LaFayette has warehouses.

Q. Large warehouses? A. I don't know the exact amount.

Q. What about Eureka? A. Eureka has warehouses.

Q. Do they have big warehouses, too? A. I don't know.

Q. You don't know. What about San Francisco? A. San Francisco apparently doesn't have very much warehousing capacity because they have always pressed us for taking the sugar away as they make it.

Q. What about Juanita? A. I don't know about
242 Juanita.

Q. Constancia? A. Constancia has practically no warehouse capacity.

Q. Would you say it has no warehouses for, say, 15 days' production? A. No, I would say—I would not only say that, but I would like to say for the record that we have received and refined practically all the Constancia sugar for every year except 1947, and that in 1946, in order to keep Constancia's good will, we actually had to shut down our factory in order to receive their sugar because they were pressing us and threatening us that in accordance with previous contracts and previous practice, we had to receive their sugar.

Q. But did they not have any warehouse? A. They did not have.

Q. They did not have? A. In 1946.

Q. What about 1947? Do they have now? A. In 1947, we did not receive their sugar and they made several efforts to secure warehouses, and I don't know how successful they were, but we did not receive their sugar in 1947.

Q. What about Herminia? A. Herminia has no warehouses.

Q. How big is Herminia? A. Herminia is a mill
243 that grinds about 300 or 350 pounds of cane per day.

Q. Isn't that the smallest mill in the whole island, or one of the smallest mills in the whole island? A. It is a small mill.

Q. That is all. A. I would like to include Pellejas, which also has very little warehouses, and insisted that we receive their sugar on a daily basis, and also Santa Barbara, which also conditioned the sale of sugar to our receiving it daily, their daily output.

Q. Does Pellejas have any warehouses at all? A. I would like to make it clear that I am not an expert as to how much warehousing Pellejas has, or other warehouses, but I am in full knowledge of the fact that these people con-

ditioned their sales of sugar, and their explanation was that they did not have sufficient warehouse capacity. They conditioned their sales of sugar to our taking their production out of the plant daily, and I received calls and threats of these friends of ours that we had to receive their sugar on a daily basis because they did not have sufficient warehouse capacity.

Q. Now, as a matter of fact, do you know whether they had it or not, from your own personal knowledge? A. I know that Herminia, Santa Barbara, Constancia, Bocachica, when we operated there, which was during the whole period involved with the exception of one year, had
244 practically no storage capacity.

Q. When you say "practically"; what do you mean? A. Practically, I mean—

Q. For a week's run? A. For a few days.

Q. For a few days' run. So the one that had the least warehouse had just a few days' warehousing storage? A. That is correct.

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245 **William M. Requa** was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lee:

Q. Mr. Requa, will you state your name and residence? A. My name is William M. Requa. My residence is 2114 Key Boulevard, Arlington, Virginia.

246 Q. Are you an economist and statistician by profession? A. I am.

Q. Were you graduated from college? A. I was graduated from Cornell University in 1931, with a B. S. Degree.

Q. Did you major in agricultural economics? A. I did.

Q. Did you serve as an economist and statistician with the Dairymen's League Cooperative Association of New York? A. I did for a period of about six years.

Q. And what was your employment following that? A. Since that time I have been with the Association of Sugar Producers of Puerto Rico at 732 Shoreham Building, Washington, D. C.

Q. That is your present employment? A. That is my present employment.

Q. Are you employed there as a statistician and economist? A. I am.

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254 Mr. Bagwell: Mr. Presiding Officer, before you recess, I would like to ask, in view of the reference that was made yesterday, testimony by the government witness, to a number of regulations and other public documents of the Department, that certain of these regulations and documents which I shall identify be officially noticed for the record. I would like to do that at this time so that if any one has any question about it, or wants additional information as to the identification of these documents, that I may be able to get that during the noon recess, and supply it for the record.

Presiding Officer Gifford: All right, you may do so.

Mr. Bagwell: It will take me just a few minutes.

Presiding Officer Gifford: All right.

Mr. Quinn: No objection.

Mr. Bagwell: These documents are as follows:

255 Puerto Rico Sugar Order No. 11, issued by the Secretary of Agriculture, June 1, 1938, and under which the direct consumption portion of the 1938 sugar quota for Puerto Rico was allotted to the various refineries in Puerto Rico.

Secondly, Puerto Rico sugar order No. 13, issued January 5, 1939, under which the direct consumption portion of the 1939 sugar quota for Puerto Rico was allotted among the various refineries in Puerto Rico.

Third, Puerto Rico Sugar Order No. 16, issued November 30, 1940, under which the direct consumption portion

of the 1941 sugar quota for Puerto Rico was allotted among the various refineries in Puerto Rico.

Fourthly, a proclamation issued by the President of the United States April 13, 1942, in which he found the existence of an emergency with respect to sugar and suspended Title II of the Sugar Act of 1937.

Fifth, a proclamation by the President of the United States issued November 28, 1947, in which he found the end of the emergency with respect to sugar, and removed the suspension of Title II of the Sugar Act of 1937.

Sixth, War Food Order No. 63, under which import controls over sugar were exercised. This order expired with respect to sugar on October 31, 1947, pursuant to the provisions of the Sugar Control Extension Act of 1947, public law 30 of the Eightieth Congress, which I would like also to be officially noticed, if there is any necessity for it.

256 Seventh, sugar export control order 1, under which the exportations of sugar were controlled, and this order expired also on October 31, 1947, by reason of the expiration date given in the Sugar Control Extension Act of 1947.

Eighth, War Food Order No. 7, issued by the Secretary of Agriculture, under which there was an allocation of raw sugar to the various refineries in the continental United States. This order was revoked by the Secretary of Agriculture, October 8, 1947.

War Food Order No. 51, issued by the Secretary of Agriculture, under which the production, distribution, and use of edible molasses was controlled. This order was revoked April 18, 1947.

The appropriate revocation orders were published in the Federal Register on or about the date which I have specified as to each of them.

The next one is CCC, Commodity Credit Corporation, importer reimbursement program for importers of the 1947 crop of Cuban and Puerto Rican direct consumption sugar. This program was issued by the Department of

Agriculture and expired October 31, 1947. Copies of that are available to any one upon request.

There are one or two other things. Regulation establishing the price control over sugar which was made
257 effective August 14, 1941. The price control over sugar expired with the expiration of the authority to impose such controls under the Sugar Control Extension Act of 1947. That date was October 31, 1947.

Rationing Order No. 3, effective April 20, 1942, under which sugar was rationed.

The next one is the order which removed the rationing. There were two orders which removed the rationing of sugar. The first one being effective June 12, 1947, and which ended the rationing with respect to consumers and institutional users. The other order was made effective July 28, 1947, and under this industrial rationing was discontinued.

Mr. Lee: Who issued those orders?

Mr. Bagwell: These orders were issued by the Secretary of Agriculture.

The price control, if I haven't already stated it, the price control orders were in effect until the expiration of the authority contained in the Sugar Control Extension Act of 1947, which was October 31, 1947.

Those are the ones that I desired to present.

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261 Mr. Bagwell: Mr. Presiding Officer, I would like to make one more request with reference to matters of which official notice may be taken in connection with this hearing.

This relates to the manner in which the refineries in Puerto Rico are organized. The information is contained in a publication known as "The Gilmore Puerto Rican Sugar Manual, 1946-1947."

That is a publication that is available to the Department here, and I would like to ask—

Presiding Officer Gifford: Is it generally available to the public?

Mr. Bagwell: Yes, it is generally.

Mr. Quinn: It is generally recognized as authoritative, is it not?

Mr. Antonsanti: May we have it on the record that the data appearing in said journal is supplied by the refiners themselves?

Mr. Bagwell: I would like to say, although I will not refer specifically to pages the purpose for which it would be used would be to get the organization setup of
262 the refineries and not for any other purpose.

Mr. Lee: Will you refer to the specific pages that you want?

Mr. Bagwell: I can by looking through here, I think. It would take a little while to go through it.

Presiding Officer Gifford. Do you think it would be specific enough for showing the purpose to be of showing the organizations of the refineries listed?

Mr. Lee: Yes.

Presiding Officer Gifford: As listed in the notice of hearing?

Mr. Bagwell: In other words, as to any other facts in here there would be no official notice taken of such facts in this publication.

Mr. Lee: All right.

Presiding Officer Gifford: For the purpose stated, it will be made a part of this record by reference only so that official notice may be taken of it.

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263 **William M. Requa**, the witness under examination at the time of the recess, was recalled, and having been previously duly sworn, was further examined and further testified as follows:

Cross Examination

By Mr. Antonsanti:

Q. Mr. Requa, by whom are you employed? A. The Association of Sugar Producers of Puerto Rico.

Q. Will you briefly describe what the Association of Sugar Producers is and what composed of? A. The Association of Sugar Producers of Puerto Rico is a trade association composed of the majority of processors of raw sugar, that is, raw sugar milling enterprises, and some of the larger growers of cane.

Q. Mr. Requa, none of the following three refiners are members of the association: Puerto Rican American Sugar Refinery, is that correct? A. They are not a member of the association.

I might say that no refiner is a member of the association as a refiner.

Q. Correct.

Now, I will ask you, Igualdad Western? A. Central Igualdad is a member.

Q. Central Igualdad is an affiliate of Western Sugar Refining? A. That is my understanding.

264 Q. Roig, El Ejemplo and Central Roig are affiliates of the Roig Refinery, are they not? Roig Refining Company? A. I am not sure which is affiliated with whom. There is an interrelationship there.

Q. They are affiliated interests, the two raw mills I have mentioned? A. I think we can say that.

Q. And this refinery? A. That is right.

Q. And although the refinery is not a member of the association, the two affiliated companies are members of the association? A. The two raw sugar milling enterprises are members of the association.

Q. However, you did state the Puerto Rican sugar refining was not a member? A. That is right.

No refiner is a member.

Q. Do you know whether any raw sugar mills affiliated

with Puerto Rican American Sugar Refining is a member of the association? A. At the present time, it is not.

Q. It is not a member at the present time? A. That is right.

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281 By Mr. Quinn:

Q. If you prepared these charts (Exhibits 11, 12, and 13) as an economist, would you prepare them and include the years 1942 to 1946 without any footnotes thereon, or any explanatory notes explaining the swing-ups or downs? A. I don't see that any footnotes are required in the circumstances.

Q. As an economist, you feel you would include the war years without comment? A. I believe so.

May I elaborate on that?

Q. Yes. A. The reason that I say that is that the years '42 through '46 were years in which no quotas had been in effect on direct consumption sugar.

Technically the contract negotiated with Commodity Credit Corporation, between Commodity Credit Corporation and raw sellers, provided certain raw sugars to
282 be reserved from out from under the contract.

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283 The Witness: Going on with that line of thought, the contract provided for certain amounts of raw sugar to be reserved from under the contract terms upon application by the seller and upon approval by Commodity Credit Corporation. Approval by Commodity Credit Corporation could perhaps be regarded as a limitation. For that reason I used the word "technically" about which Mr. Quinn was asking me, but actually during those
284 periods my understanding of the matter is—this has been confirmed with conversations I have had with officials of the Sugar Branch in the past—that during those years approval of the applications for reserved amounts was automatic upon application by the seller.

By Mr. Quinn:

Q. As shown by Exhibit A in Federal Register in between the years '42 to '46, at no time did all total shipments from Puerto Rico direct consumption exceed 126,000 tons; is that correct? A. That is right, during which time everybody had the right as the program was handled to ship in as much as he wanted to.

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Q. How could you say that, Mr. Riqua, when the licensing of the amount of sugar was entirely in the hands of the Commodity Credit Corporation? A. Because of the fact, as I just brought out, that approval of releases was
285 automatic on the part of the Commodity Credit Corporation.

Q. But, do you know, as a matter of fact, the Commodity Credit Corporation wouldn't release above a certain amount of sugar for direct consumption? A. That upper limit, as I understand, was never put to the test during the war years and prior to 1947.

Q. But in no time, to your knowledge, did Commodity Credit Corporation approve for direct consumption for release to direct consumption, in excess of 126,000? A. I don't know whether they did, or not.

Q. What do the figures in the Federal Register show? A. I know figures in the Federal Register indicate the total deliveries were less than that.

Q. Those figures represent all entries during those years of direct consumption? A. That is right.

Q. You testified this morning you compared the year 1939 to 1947 in reply to some questions by Mr. Lee; is that correct?

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287 By Mr. Antonsanti:

Q Mr. Requa, as an economist, do you believe that the period 1941 to 1947 was a normal representative period? A. If you would change that to 1942—

Q. I will change it. A. From 1942 to 1946 I would regard it more for this purpose as a normal year. I would regard it for purposes of this hearing as a normal year.

288 — Q. You would as an economist? A. For the purpose of this hearing, yes.

Q. You would? A. Yes.

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By Mr. Peyton:

Q. Your last answer prompts a question, Mr. Requa. Are you familiar with price controls on sugar? A. Yes, in a general way.

Q. Would you consider, as an economist, that price controls on sugar interfered in no way with normal supply and demand operations? A. I think price controls were a factor in sugar production. Of course, in addition to price, however, we were operating under a subsidy program during that period in which most producers found it somewhat profitable to engage in production of sugar.

* * * * * * * * * *

289 Q. Do you think rationing controls constitute a proper basis for choosing a period as normal? A. I think the witness of Puerto Rican American testified here that the demand for sugar was such that he could have filled considerably more shipments than he did.

Q. Is that normal in sugar? A. If its abnormal, its abnormal in the way of encouraging production on the part of the entity, such as Puerto Rican American, rather than the opposite, I would think.

Q. Do you consider actually the war period, as an economist now, do you consider actually the war period as having no abnormal economic effects on the marketing of sugar? A. Mr. Peyton, that was gone into at great

290 length this morning.

Q. I ask your opinion. You can answer that yes or no. A. I am about to give you my opinion. The war period undoubtedly caused a great many annoyances to all

producers of sugar, refined, raw, or other types,—Puerto Rican American and undoubtedly other refiners down there. Purely from gauging results from the looks of actual physical entries, however, it would seem to me that the problems and annoyances were not insurmountable; that they had been met at least by certain refining interests down there, and met satisfactorily.

* * * * * * * * * *

291 **Alfredo Ramires de Arellano, Jr.** was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Garcia-Mendez:

Q. Will you please state your name? A. My name is Alfredo Ramires de Arellano, Jr.

Q. Will you please state your occupation or profession? A. I am a chemical engineer. At the present time I am President of Western Sugar Refining Company.

Q. And did you graduate as a chemical engineer? A. I finished college as a chemical engineer, and graduated in 1937.

Q. How long have you been connected with Igualdad Western? A. I presume in a technical capacity?

Q. Either technical capacity, or as executive officer, or director of the company? A. I am a director. I have been connected with Western Sugar Refining Company since its formation, since the beginning, with an interim pe-

292 riod of three years during which I was not there all the time while I was in the Army.

Q. As President of Western Sugar, are you familiar with the development of the business of Western Sugar and Igualdad in the last, say, eight or ten years? A. Yes, sir; I am, since the foundation of both enterprises.

Q. You are aware of the formula permitted by the Department of Agriculture for the distribution of direct consumption sugar for the year 1948? A. Yes, sir; I am.

Q. Would you please state your point of view in connection with that formula, or any formula proposed by you? A. Will it please you if I read it into the record? I have a few excerpts I made here on comment on that.

Q. All right. A. I will start by discussing the formula proposed by the Department of Agriculture.

The formula proposed by the Department of Agriculture gives equal weight to both "ability to market" and "past marketings".

1. Ability to Market:

According to the proposal of the Department of Agriculture, "ability to market" is to be measured by the highest one year's marketing in the thirteen years, 1935 to
293 1947, inclusive. As we see it, "ability to market" is a prospective or future element and must be measured by immediate past performance. The Department's proposed formula takes widely separated years for the various companies, to wit:

1935 for Puerto Rican American Sugar Refinery; 1936 for San Francisco; 1939 for Central Guanjca; 1940 for Roig; 1941 for Camus; 1947 for both Central Aguirre and Igualdad-Western.

The record of performance for the immediately preceding year should be the yardstick. Based on the Department's formula Compania Azucarera de Camuy, for instance, would be allotted 3742 tons on the basis of "ability to market".

"Actually, it has no such present ability and, as a matter of fact, it has not delivered any direct consumption sugar during the years 1942 to 1947, inclusive.

"The proposed measure of 'ability to market' is also contrary to an established ruling of the Department. In Puerto Rican Sugar Order No. 13 issued January 5, 1949, it was stated:

"There are two important factors to consider in determining 'ability * * * to market' direct consumption
294 sugar. These two factors are:

1. Refining capacity and

2. Current marketings of direct consumption sugar.

"Both of these factors are essential to a determination of present ability to market sugar. The refining capacity of processors can best be determined by actual performance for a representative period of time, rather than by mere rated mill capacity. It is believed that the best ten consecutive working days should be taken as the basic performance period.

"However, in view of the fact that most mills in Puerto Rico follow the practice of discontinuing operations for the weekend or a similar period (R. pp. 153, 169, 273, 323), it was deemed necessary, in the interest of fairness to all, to use the best five consecutive working days of the basic ten-day period. This five-day period is deemed to be a representative period for the purpose of measuring mill refining capacity.

"In regard to the second factor, it is believed that the period from January 1, 1938, to October 24, 1938, affords the best available measure of current marketings and
295 should be considered in determining 'ability * * * to market.' This is deemed to be a fair measure in view of the fact that all 1938 allotments had been filled, or substantially filled, on October 24, 1938 (R. Ex. 4)."

This is a part where I want to call your attention to the record.

"Since it is apparent from the record that no processor will receive an allotment equal to the amount of direct consumption sugar which could be marketed, it is important in determining ability to market to give such weight to the factors used as will afford the best relative measure of such ability for all processors.

"Accordingly, it is believed that the factor of 'refining capacity', as measured by actual performance for the period stated, has a greater relative importance in measuring 'ability * * * to market' than has the factor of current marketings."

Again I call attention to this other section which is underscored.

* * * * * * * * * *

296 "This results from the fact that current marketings could not exceed the allotment, whereas the production of sugar during the five consecutive working days was not subject to a similar limitation.

"Therefore, it is believed that 'ability * * * to market' should be measured by giving three-fourths weight to the highest average output during the best five consecutive days of the above-mentioned basic ten-day period and by giving one-fourth weight to current marketings for the period from January 1, 1938, to October 24, 1938, as shown by the quantities of sugar certified for entry into the continental United States during that period."

If the Department is to be consistent with its previous ruling, it is evidence that since current marketings for the year 1947 exceeded the 126,033 tons normal allotment, that year's marketings constitute a fair and equitable measure of "ability to market."

In the above-mentioned Sugar Order No. 13, the Department took the current marketings for the previous year as as the yardstick in measuring the "ability to market."

If in 1939, the Department regarded the preceding
297 year as the fair measure, then the year 1947 must likewise be regarded as a fair measure for determining ability to market in 1948.

The market allocations for 1947, were made in proportion to the 1946 deliveries, when there were no restrictions on the entries of Puerto Rican direct consumption sugar into the continental United States. This action in 1947 of the Department further strengthens our contention.

We believe strongly that no formula should be approved which would allow selections over such an extended period as represented in the thirteen-year span proposed by the Department.

2. Past Marketings:

"Past marketings" under the Departments formula is measured by the average deliveries for the years 1935-1941. With the exception only of 1940, these were restriction years. This measure of "past marketings" is not fair and equitable in view of the limitations to which producers were subjected during these years.

Measuring "past marketings" on the basis of the last ten years (which comprise the years 1942-1947 when there was no limitation), is, in our opinion, more within the letter and spirit of the law. In taking a basic period for
298 determining "past marketings" the more recent years, the last three or the last five, or even the last ten, would be more representative.

In a spirit of liberality we are proposing the last ten years. Any previous year or any larger period is not fair or equitable.

Formula Proposed by Igualdad-Western:

We are submitting a formula [Exhibit 14] on the basis of the "ability to market" and "past marketings" as construed by us. In this formula we have set 5169 tons as the unallotted reserve for marketings of raw sugar for direct consumption, which is the amount set forth by the Department in its proposal. If our proposed formula be accepted, this unallotted reserve should be reduced on the basis of said formula and the individual allotments would then be increased accordingly.

* * * * * * * * * * *

Under this formula it is basically the same formula of the Department. The only change we have made is that we confine ability to market to the marketings in the
299 year 1947.

Also, instead of selecting the years for past marketings from 1935 to 1941, as suggested by the Department, we have selected the years 1938 to 1947 which comprise a ten-year period which we deem representative.

Under this formula Puerto Rican American would get a quota of 64,763.

Central Aguirre would get 7,197.

Guanica would get 1,000.

Igualdad-Western is 23,772.

Roig El Ejemplo is 22,350.

San Francisco is 1,248.

Camuy is 434.

This Camuy quota would probably be redistributed because they are out of business.

The total is 120,864, and as I said before, the 5,169 tons set by the Department in their formula is left there to complete a total of 126,033.

* * * * * * * * * *

300 The Witness: I am submitting a chart [Exhibit 15] showing comparative percentage marketings of direct consumption sugar by the three largest refiners (Puerto Rican American, Roig, and Igualdad-Western), during the six-year period of 1942 to 1947, inclusive.

* * * * * * * * * *

301 By Mr. Garcia-Mendez:

Q. Mr. Arellano, does this chart show the comparative deliveries in continental United States of direct consumption sugar of the three latter companies, Puerto Rican American, Igualdad-Western, and Roig? A. Yes, sir; it does.

If I may explain the chart, I will make it easier for anyone who wants to make any questions on it.

In these charts I have shown graphically the Puerto Rican American marketing for direct consumption during the years 1942 to 1947, inclusive, equally well the Igualdad-Western and Central Roig. Also the curve takes the marketings in the local market of Puerto Rico.

However, although they are not there for the purposes of these calculations, the totals taken, of course, include every other producer who either sent direct consumption

sugar to the United States or sold refined sugar in Puerto Rico.

It is apparent from this chart that Puerto Rican American did not keep up its exports of direct consumption sugar to the extent it should have. On the other hand, it
302 shows a rising curve both for Central Roig Refining Company and for Western Sugar Refining Company. In the local sales it is apparent from this chart that both Western Sugar Refining Company and Central Roig held their ground in the percentage of the total which was sold in Puerto Rico, whereas, the Puerto Rican American in order to hold its ground, it seems, disregarded the direct consumption exports because they did hold their ground in the local sales, but in order to do that apparently they disregarded keeping up their exports.

Q. The figures you have taken in making your charts for local sales, where did you obtain them? A. Out of the official records of the Association of Sugar Producers of Puerto Rico.

Q. Do you believe they are accurate to the best of your knowledge? A. To the best of my knowledge and belief. They are taken usually for other statistics.

Q. For official purposes? A. Yes.

Q. Go ahead. A. It is evident from both charts that Puerto Rican American Refinery chose to increase its local sales in preference to shipping direct consumption sugar into continental United States.

303 A schedule [Exhibit 16] is submitted showing year by year what the percentage of the deliveries of direct consumption sugar and local sales by each of the three largest companies is of the total Island production.

* * * * * * * * * * *

By Mr. Garcia-Mendez:

Q. Will you please go ahead, Mr. Arellano? A. The facts outlined above and the further fact that Igualdad-Western increased its deliveries of direct consumption sugar, especially during the difficult and critical war and postwar years,

whereas Puerto Rican American concentrated on
304 local sales, should justly operate in favor of Igualdad-Western in the acceptance of its proposed formula.

To summarize:

First: We object to the selection of random years out of a thirteen-year span to measure "ability to market." We believe that the 1948 "ability to market" should be based on the 1947 marketings.

Second: We object to the selection of the years 1935-1941 as a measure of "past marketings". We believe that a period of three, five, or at the most ten years immediately preceding 1948 is the most fair and equitable measure of "past marketings."

Third: We have accordingly submitted a formula. It follows the general form of the Department's proposal, but remedies the defects to which we vigorously object.

We request your favorable action.

305 Q. * * * In your proposed formula, you only are including the past marketings and ability to market. Will you please explain why you have done that?

* * * * * * * * * *

306 The Witness: Well, the reason for that is that we have tried to limit ourselves to the formula as suggested by the Department itself. However, I wish to make clear at this moment that if it should be so counseled by our attorneys, we will at the appropriate time request the inclusion of that, also.

By Mr. Garcia-Mendez:

Q. Do you mean to say that if under the terms of the law, it is mandatory for the Department of Agriculture to consider the proportionate share that you are requesting that your formula be amended by including proportionate shares thereof, though it be in a smaller percentage? A. Yes, sir, by all means.

* * * * * * * * * *

Cross Examination

By Mr. Antonsanti:

Q. Mr. Ramirez, you do agree, do you not, with the Department formula in so far as it selects for your refinery the year 1947 as a representative year in ability to market? A. As a representative year for ability to market?

307 Q. For ability to market, yes. A. I believe that is about the only case in which justice is done. That is the year that should be taken.

Q. That is the only thing you like about the formula, is that right? A. That is the only year that is truly representative.

Q. You like that? A. Of course, we agree with it.

Q. That happens to be the year in which you had the largest deliveries in the continental United States; is that correct? A. It happens to be so, yes.

Q. It happens to be so. You like the treatment for yourself, but you don't seem to like the same treatment for your competitors, I take it. A. On the contrary, we want the same treatment.

Q. You want the same treatment? A. We want them to take 1947, too.

Q. Would you not believe that the same treatment for your competitor is to take his highest year and not his lowest, or one of his lowest? A. Well, as a matter of courtesy.

Q. We are talking now about equity and fair dealings. A. Yes, sir.

Q. Do you believe it would be fair to take your best year and take your competitor's worst year? A. Not at

308 all, no. If there were not ruling and no precedent that the previous year be taken, of course not.

Q. Now, you did incorporate into your statement, into your written statement which you wished to submit, certain excerpts from Puetro Rico Sugar Order No. 13. Did you not read certain excerpts from that? A. What is the first part of your question, sir?

Q. In the written statement which you have submitted—
A. Yes, sir?

Q. —you have copied therein certain excerpts from Puerto Rico Sugar Order No. 13. A. Yes, sir.

* * * * * * * * * * *

310 Q. And then it follows:

"Accordingly, it is believed that the factor of refining capacity as measured by actual performance for the period stated has a greater relative importance in measuring ability to market than has the factor of current marketings." A. Yes, sir, I follow.

Q. Now, in your statement, however, although you copied parts of this excerpt, you do not seem to follow that reasoning. You take from that Sugar Order those things which are pleasing to you, but you do not follow the entire Sugar Order; is that right? A. Well, I do, sir. After talking with my counsel here on this matter, precisely that is the reason why we make this suggestion, because that was the case then, and the reason why they took that was because they had not a truly representative marketing here in which the production was above the normal allotment. Now, this 1947 was above the normal allotment. You didn't have that in 1939 or 1938 when this was made.

311 Q. But current marketings, back in 1938, meant the immediate past. Consequently, the measure of current marketings in 1938 was the immediate past; is that correct? A. It was taken, yes.

Q. Yes. Now, the immediate past current marketings now happen to fall in 1947; is that correct? A. Yes, sir.

Q. And the Sugar Order—I think this is incorporated into your statement—does use a phrase on page 3, beginning on page 3 at the bottom of the page— A. Yes, sir.

Q. "The refining capacity of processors can best be determined by actual performance for a representative period of time."

That is part of your statement?

* * * * * * * * * * *

312 A. Yes, sir.

Q. Now, I ask you if you believe the year 1947 to be a representative period? A. I do, sir.

Q. You do. Why, because you happen to have delivered during that year the largest amount? A. No, sir.

Q. Or are there other reasons? A. There are other reasons.

Q. Would you state them? A. Well, it was a year in which, although it is a fact that there was a limitation to production as fixed by the government, the limitation was made on a free year, on an unrestricted year, 1946, when everybody was free to send all he could.

Q. Was he free to produce it? A. Yes.

Q. In 1946? A. In 1946, yes, sir.

Q. If he could get the sugar? A. Why, of course.

Q. You were in the war then, weren't you, Mr. Ramírez? A. I was back, sir.

313 Q. You were back in 1946? A. Yes, sir.

Q. What years did you spend in the war? A. 1942 to about the end of 1945.

Q. About the end of 1945? A. Yes, sir, just before the—about December, 1945.

Q. I see. Then is it not true, Mr. Ramirez, that so far as your refinery is concerned, the selection of the year 1947 to gauge or measure your ability to market directly, does not concern you, but rather that you object to the formula because it selects some one else's best year, also. A. No, sir.

Q. That is not it? A. No, sir.

Q. If, in the suggested formula, the one suggested by you, you only went back ten years, it would leave out, would it not, in the computation of the formula, the best year of Puerto Rican American? A. Well, I only counted back to the last ten years, but if you call my attention to it, there is a year in which Puerto Rican American had a very large production.

Q. That was beyond that ten year period? A. Oh, that was way back, yes.

Q. How much way back? A. I think it is 13 years back.

314 Q. Thirteen years. How further back from the commencement of the war would that take us? The actual emergency. A. The war started in 1941.

Q. What is that? A. I say, the war started in 1941.

Q. The war started in Europe in 1940, didn't it, 1939? A. Yes.

Q. And how far back from there would that be? A. Four or five years, I guess.

Q. Four or five years? A. Yes.

Q. And you believe it to be fair and equitable in the allotment, 1948 allotment— A. Yes, sir.

Q. —to measure your ability to market by your best year and some one else's ability to market by taking years that were not truly representative and in which production was curtailed for the many difficulties and dislocations herein mentioned in this hearing? You believe that to be fair and equitable? A. Well, I am not acquainted with the difficulties that others had in the first place, but with regard to that, it being 1947, it just happens to be the way it should be. I suggest it because that is the way that we interpreted— believed the markets should be measured. It isn't

315 because Puerto Rican-American wouldn't reach up to what it did in 1935, you can be sure.

. . . . . .

Q. Mr. Ramirez, I note here your great liberality in your formula towards Puerto Rican-American Sugar Refinery, 64,763 tons as a proposed quota. Is that correct? That is your proposed quota for Puerto Rican-American? A. Yes, sir, that is what I would propose.

Q. Do you recall part of this hearing where the refiners met in Puerto Rico at the suggestion of the Director of the Sugar Branch to see if we could get together on the distribution of the allotment among ourselves? A. Yes, sir, I recall that.

Q. At that time, did you or any one—any one or other refiners or shippers of direct consumption sugar, suggest to Puerto Rican-American that 64,763 tons would be a nice allotment for Puerto Rican-American? A. I believe we did suggest that.

Q. You did suggest 64,000? I suggest to you that the highest you ever suggested was in the neighborhood of 61,000, and I ask you, when did you get so liberal?

316 A. Well, to tell the truth, maybe your figures didn't register very well at that time, because I more or less figured this same formula. Rather, not the formula, but an average of the years gave us more or less that total.

Q. Perhaps I can call your own figures to your mind. A. Yes, sir.

Q. Do you recall being present at a meeting of the refiners held at the Sugar Producers Association in San Juan, Puerto Rico, some time in November, or the last part of October? A. Well, I go there so often, you know—

Q. Yes. I suggest to you to look over these three papers I have here, and ask you if the figure, 62,449, 35, was not the figure that you and the other shippers of direct consumption sugar to the continental United States suggested that Puerto Rican-American might be satisfied with for the 1948 season? A. Tell me: are these the figures that we talked about over there?

Q. That is what I understood them to be. I want you to confirm that they are or that they are not. A. Well, as you will see, the basis that we had for this formula at that time was the five-year marketing period, 1943 to 1947, so therefore the figures change.

Q. But the figure is 62,000? A. Yes, I can see that.

317 Q. That is less than what you are willing to concede now; is that right? A. Yes, sir.

Q. And is it not true that this particular formula, or figures that I now show you, were one of three formulas which you suggested that Puerto Rican-American should take, and happens to be the largest allotment that you

would concede to Puerto Rican-American by virtue of the three formulas you prepared? A. I only recall that one.

Q. You do not recall. And would you please tell us what reason you have in your formula for including the great many more abnormal years than normal years. A. Well, if you will see the formula which we suggest, it comprises a period of ten years. We have to stop somewhere, you know, when we start back.

Q. I see. A. And the ten-year period is usually taken for statistics as a representative period.

Q. Taken by whom? A. Well, in all sorts of statistics. Generally, you speak in tens.

Q. Even though, in that period of ten years, there should be a very large period of abnormality, you still think
318 it should be taken for statistical purposes? A. Abnormality, sir? What kind?

Q. The war. A. Well, I think it is a representative period. It comprises some of the restricted years and it comprises some of the unrestricted years.

Q. I believe you stated that it was apparent from your graph, Exhibit No. 15, that while you held your own in the local market, Puerto Rican-American increased its local sales to the detriment of its direct consumption deliveries to the United States. A. Well, what do you—are you asking me a question?

Q. I believe you made that statement. I wonder if you wish to correct it. A. * * * If you will recall, and the record will show it, I said that both Roig and Puerto Rican-American and ourselves more or less held our ground in Puerto Rico; whereas Puerto Rican-American held their ground only there and in the direct consumption sugar all the others went up. Also, whereas Puerto Rican-American went down, and the interpretation of that is that in order to keep their ground in Puerto Rico, which was a very good market for all, they came down and disregarded
319 their direct consumption.

Q. But the graph doesn't show that, Mr. Ramirez. A. Yes, sir, it does.

Q. I call your particular attention to the year 1945, in your graph. A. Yes, sir.

Q. To 1947. A. Yes.

Q. Doesn't it show there that Puerto Rican-American was dropping off in its local sales during all that period, 1945 to 1947? A. Well, you generally interpret this as an average period, you know. You don't go from one point to the other, but if you will look at the local sales of Roig, you will see that it goes up and goes down, too, but the percentage for the period is more or less the same.

Q. Doesn't your figure here, 1945, in the graph, for Puerto Rican-American, read around 35 or 36 per cent. A. About 36 per cent.

Q. In 1945? A. It looks like that.

Q. It reads about 28 per cent in 1947? A. Yes, they lost some ground there, too, besides their consumption ground.

Q. All right. A. They didn't market in the same
320 proportion as the others.

Q. So it wouldn't be true to say that we jeopardized direct consumption deliveries to the States in order to avail ourselves of a local market, since both went down, both local sales and direct consumption deliveries in the States? A. I believe that they did jeopardize the shipments, because they could have shipped that local quota out to the States and filled up their usual quota.

Q. But the comparative lines for Puerto Rican-American in 1947, for instance, doesn't it show almost a straight line throughout the whole year for direct consumption deliveries in the United States? It does, does it not? A. Well, I didn't get your question.

Q. Doesn't your line for 1947, the direct consumption deliveries, Puerto Rican-American, show a straight line all the way through, no dropping off? A. You mean the comparison between the percentage of the total shipped in 1946 and 1947?

Q. I am asking you if the line is straight. A. The year is represented by a period there, sir. It isn't a line.

Q. There is a line drawn here through 1946-1947, up above. A. Yes, but that—

321 Q. Between 50 and 40 there is a line about one-third down. A. Yes, sir.

Q. Which is perfectly straight; is that right? A. But the line isn't what counts. It is the points.

Q. The point is the figure? A. The percentage, yes.

Q. About 46 something? A. Yes, sir.

Q. And that figure shows all the way through the year 46 per cent? A. Well, that is the average of the total for that year.

Q. But going down the graph, it shows a drop in local in percentage, doesn't it, so rather than jeopardize, in 1947, the local market—the continental market for the local market, it was the opposite, was it not? A. Well, I wouldn't say that, sir. In 1947, you sold locally 27,840 tons which was only 3,000 something tons less than you did in 1946 in Puerto Rico.

Q. I am asking you what your chart shows. A. The chart shows that same figure, represented the percentage.

Q. But the line did go down, didn't it, in 1947? A. In the local market?

Q. Yes. A. You mean that the percentage—

322 Q. Yes. A. —that Puerto Rican-American sold in the Island of Puerto Rico was less than a year before?

Q. Yes. A. I believe that there was a lot of competition there and they couldn't sell any more, sir.

Q. But it did go down? A. Yes, a little bit.

Q. It did go down. A. Yes.

Q. While your line of direct consumption deliveries to the States remains on a parallel, the percentage? A. The line in 1946 and 1947, you mean?

Q. No, 1947. A. But the percentage is represented by a period, and the line represents the comparison between 1946 and 1947 only.

Q. The two points shown, 1946 and 1947, in your line, are exactly on a level, aren't they? A. Yes, sir.

Q. At the beginning of the year and at the termination of the year. A. There is only one percentage for the whole year there.

Q. I see. A. What you probably mean is that the percentage that you sold as of the total of the Island,
323 was equal in 1946 as it was in 1947. That is true; yes, sir. Some 27,840 tons.

Mr. Quinn: In what year? The Witness: 1947, sir. Mr. Quinn: Where did you get those figures? The Witness: Well, they are the ear-tagged totals, sir.

By Mr. Antonsanti:

Q. Were these quotas interchangeable? Could Puerto Rican-American have taken its local quota and shipped it to the United States? Could it have done that? A. Taken its local quota?

Q. Yes. A. And shipped it into the United States?

Q. Yes. Of refined. Could it have done it at random or at will? A. Make an exchange of sugar?

Q. Could they have marketed that? Were they permitted to market the amount they sold in the local market? Could they sell it up here during the year 1947? A. Not during 1947, sir.

Q. No? A. No.

Q. Could you do it? A. Of course not. We were
324 limited.

Q. You were limited just as we were. A. Yes. In 1947, we were based on the 1946 unrestricted year.

Q. What was the figure you gave for our local marketing in 1947? A. I beg your pardon, sir?

Q. What was the figure you gave for our local marketings in 1947? A. It is estimated as of the day of the chart that you will be selling some 27,840.

Q. 27,000? A. 27,840 tons.

Q. Isn't the actual truth that the figure is only 22,384, and not 27,000? A. Well, sir, this quotation is ear-marked for Puerto Rican-American according to the records over in Puerto Rico.

Q. Well, what records? A. Well, you know that at the beginning of this 1947, the General Supplies Administration, which is headed by Mr. Vincente Rios, fixed a quota of refined sugar for Puerto Rico, and that was distributed in more or less figures to be determined upon the purchases that would take place from local mills of their local quotas.

So that is why we could anticipate before the year
325 was over, the amount of sugar that we would make for local consumption, and we knew in advance what you and the others would make. Everyone knew.

Q. No one was at liberty to buy whatever they wanted to, either to ship or to sell locally? You had to go to some one else to be allowed to ship? A. You had to buy local quota.

Q. You had to buy local quota? A. Yes.

Q. Do you know what the local quota assigned to Puerto Rican-American was, by Commodity? A. I don't think they got a local quota.

Q. By Vincente Rios? A. Central Mercedita got it. They didn't get any. Central Mercedita got the quota, and they bought it from Central Mercedita.

Q. What was that quota? A. I don't remember now.

Q. Do you remember it to be 8,000 tons? A. Well, it should be around that figure. Our mill was also—

Q. What quota did you get? A. Something around 6,000.

Q. 6,000? A. Yes.

326 Q. Mercedita only got 8,000? A. Yes.

Q. You were in the market much more because you purchased other people's quotas? A. No. You marketed more.

Q. No. But you were able to market more than the quota assigned to your company because you purchased some one else's quota? A. Yes, the same way as everybody else. That is, the refiners.

Q. Now, from the figures I have here, Mr. Ramirez, it would appear that you sold at a local market, 16,453 tons of direct consumption sugar in 1947; is that correct? A. From the figures that who has?

Q. That I have. A. Have I got those figures?

Q. They were read into the record yesterday. A. Oh. Well, this is the quota we purchased.

Q. 16,000? A. No, we purchased what appears here.

Q. How much is that? A. 19,568.

Q. 19,568? A. Yes.

Q. And proportionately, did you or did you not increase your local sales during the last six years referred to in your graph? A. Proportionately?

327 Q. Yes. The proportion to the total sales. A. The percentage of the total sales for the Island, as you will interpret from the chart, remains approximately the same.

Q. Let me ask you the question in another way, then: what did you market in the local market in 1939? A. I don't have that figure.

Q. You don't have it? A. I don't have it here, but I think they were read into the record yesterday.

Q. The figure that was read into the record yesterday was 4,605 tons. Would that be about right for the year 1939? A. Well, if those records are official, that would be right.

Q. And in 1947 you just stated it was 19,000 tons? A. 1947, yes, sir, about 19,000.

Q. So you increased four-fold, have you not, your local sales during that period? A. Well, the figures will indicate that, yes.

Q. Do you know the proportion increase for Puerto Rican-American? A. Well, I don't have your figure for that previous year, either.

328 Q. Well, the figures as read into the record are 7,265. A. 7,265?

Q. No. 9,256 in 1939 as compared with 22,384 in 1947. A. The indication then is that you only progressed three times while we progressed four times.

Q. I don't follow your progress. It is a little too quick for me. From nine to twenty-two is not three. A. Well,

4,600 is to 19,000 approximately four times, and you had 9,000 as compared with 22,000. In 1947?

Q. That is the figure read into the record. A. I see. What did you do with the other five?

Sir, it seems that we have increased our sales in a higher proportion in tonnage, but if you will look at the percentage of the total, it is the same.

Q. What total? A. The total. When you figure that the local sales were 100 per cent, you see. Of that percentage, as you will see, we have run from 19.5 to 18.32, to 18.77, to 19.4, to 19.85, to 19.64. That is a constant percentage. Puerto Rican-American had 26.9, 29.7, 29.5, 35.1. It shows that the local market was very promising.

Q. Keep on reading. A. 33.92 and 27.94, the last 329 year.

Q. We did go down, didn't we? A. Yes, a little.

Q. While you went up? A. Yes, sir, but you said that—I am sorry.

Q. One more question, please. A. Yes, sir.

Q. Why did you limit your chart here to five years if your formula which you suggest is ten years? A. Well, the figures for local consumption, see, were not available to us until they were read into the record yesterday. We knew ours, but we didn't know yours, nor anybody else's, way back of 1942. We couldn't find them. If we had, I would have made that chart.

Q. I see. The figures were not available to you? A. That is right.

By Mr. Quinn:

Q. Mr. Ramirez, I have one or two questions.

I think you referred to the years 1935 to 1941 in your prepared statement, and you said that with the exception of 1940, these were restrictive years; is that correct? A. Well, probably I said that, but remember, sir, that I not being a lawyer, I don't know the exact dates in which the law went in and out. However, as a business man, I can

tell you that as far as we are concerned, only 1940 -you see, it was restricted up to 1941, except that in 1940,
330 we could put in all we wanted.

Q. You used the term "restrictive". What do you mean by that? A. Well, that in all those years, with the exception of 1940—

Q. There were no restrictions? A. On the contrary.

Q. No restrictions? A. On the contrary, in 1940, we could bring in as much as we could produce, but from 1938 to 1941, with the exception of 1940, were restricted years.

Q. Didn't you go back to 1935 in your years? A. You see, then, we were not refining, in 1935.

Q. I know, but in your statement, didn't you go back to 1935 and refer to the period 1935 to 1941? A. My statement, you mean? I think I did.

Q. I don't want to burden you, but let me ask you this: were there any allocations made in 1936? A. That, I don't know, sir.

Q. Were there any allocations made in 1937? A. I don't know. I can only tell you from 1938, this way, because it is when we started our refining, in 1938.

• • • • • • • • • • • •

331 **Chester Davis** was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

Direct Examination.

The Witness: I am Chester Davis, the Government witness.

Mr. Ramirez de Arellano made reference in his testimony to Central Camuy, and I would like to read for the record the recommendation of the Department of Agriculture with reference to one or two or three of the Centrals or Refineries who are represented here.

Mr. Presiding Officer, Central Camuy did not send a representative to this hearing to indicate its interest or ability to produce or deliver direct consumption sugar

332 mentioned in the Department's proposed allotment order.

Likewise, the data submitted for the record show that for the year 1942 to 1946 inclusive, Central Camuy did not market direct consumption sugar either in the continental United States or in Puerto Rico.

The records also show that Camuy marketed no direct consumption sugar in the continental United States during the calendar year 1947.

Therefore, the Department proposes that, irrespective of the formula ultimately adopted in arriving at a final allotment order, any allotment which would otherwise result for Central Camuy be pro rated to the other refiners. I do not know whether there are any representatives of Centrals Guanica, Aguirre, and San Francisco here, but although Centrals Guanica, Aguirre and San Francisco have not yet appeared at this hearing, data available to the Department previously made a matter of record indicates that they currently produce and deliver direct consumption sugar to the continental United States, and should therefore be given appropriate consideration in any formula ultimately adopted.

• • • • • • • • • • •

333 **Frank Philippi** was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Garcia-Mendez:

Q. Will you please state your name. A. My name is Frank Philippi.

Q. What is your occupation or your position now? A. I am a Vice President and Manager of Igualdad.

Q. How long have you been the manager of Igualdad? A. From 1934 up to now.

Q. As such manager, did you have available all the data in connection with the granting to Igualdad and Western of refining for the last year? A. Yes, I have.

334 Q. Who has been in charge of general operation in Igualdad, Western for the last year? Have you been the person in charge? A. I have.

Q. The evidence submitted by the Department of Agriculture, Mr. Philippi, shows that Igualdad had an average production for the best five consecutive days for 1947 of 227.89 tons. Is that correct? A. Yes.

Q. It is correct? A. It is correct.

Q. Would you say that that is the highest consecutive five day period of Igualdad during its history? A. No, sir. We proved 1938 a capacity of 274 tons, and we know we had still better years than that.

Q. Better than that? A. Yes.

Q. So you have a better five-day consecutive period? A. We have.

Q. Have you made any improvements in Igualdad recently, Igualdad-Western? A. We have done it and we are doing it just now.

Q. What kind of improvement are you making? A. Well, we are doubling our capacity.

Q. You mean your present capacity will be dou-

335 bled by 1948? A. By 1948, yes.

Q. When you say by 1948, you mean for the crop which is about to start in December, 1947, and end in 1948, for this coming crop? A. For the coming crop, yes.

Q. For the coming crop. Were you here while Mr. Giles testified on behalf of Puerto Rican-American? A. Yes, sir.

Q. Did you hear all his testimony? A. Yes, sir.

Q. In connection with the gasoline difficulties that he had, and the transportation difficulties, would you like to make some statemen; to the Presiding Officer? A. Well, we had also difficulties, but we get all the gasoline we need for transporting cane or sugar. Cane and sugar was an

essential product and they assigned for the operations for moving cane or sugar all the gasoline you need.

Q. What about tires? A. Also tires.

Q. How far east is Igualdad Western from the Mayaguez port? A. About 9 kilometers.

Q. About 9 kilometers. Is that the port where you sent your sugar to the continental United States? A.
336 Yes, sir, the only port.

Q. Did you have any Army camp or Army airport close to your refinery? A. Yes. About two or three kilometers from Igualdad Western. It is an airport which belonged to the Army during the war.

Q. Were there regulations as to the use of lights by the trucks that you used in hauling your sugar? A. Well, we have the same regulations that any one had on the Island.

Q. Including the black-outs, too? A. Sure.

Q. Could you overcome them? A. Yes, sir.

Q. Was it difficult to overcome all those regulations? A. Well—

Q. I mean, to comply with them and still be in production. A. It was difficult but we overcame all the difficulties.

Q. During this war period, did you increase your warehouse capacity? A. Yes, sir, we increased it in 1941.

Q. And how much did you increase your warehouse in capacity? A. Well, we put up two warehouses. One 60,000 bags capacity, and another 40,000 bags. Bags of
337 250 pounds.

Q. 250 pounds each? A. Yes.

Q. 60,000 bags. That means 7.5. 75,000 tons? A. Yes.

Q. And the other one was what? A. 50. The other one was 50. That means 100,000 bags of 250 pounds each, which means 12,500 tons.

Q. How could you build those warehouses in spot of the war? Did you get any— A. Yes.

. . . . . .

Q. When did you build those warehouses? A. We started in 1941 and finished later on.

Q. When did you finish them? A. Well, in 1942.

Q. During the construction of those warehouses, did the wartime regulations come in? Were they applicable

338 Q. During this wartime period, did you also rent then? A. Well, it was applicable to every one.

additional warehouses? A. Yes, sir.

Q. In connection with the shipping of your sugar, did you have to apply to the War Maritime Commission? A. Everyone had to do it.

Q. Everyone. Did you eventually get shipping space? A. Yes, sir.

Q. Isn't it your recollection that every one got the shipping space in Puerto Rico? A. Well, I think so.

* * * * * * * * * *

Cross Examination

By Mr. Antonsanti:

Q. Are you familiar with the conditions in the port of Ponce during the war years? A. No, sir.

Q. You were not? A. No, sir.

Q. You are merely stating what the conditions

339 were on the Port of Mayaguez, from where you shipped? A. Yes.

Q. These warehouses which you speak of, they were already in the process of construction at the time that the war intervened; is that right? A. Yes, that is right.

Q. And you were allowed to continue what you had already started? A. Yes, sir.

Q. You had already purchased all your materials? A. I don't know about all. Part of it we had purchased, yes.

Q. How far along was your construction when December 7, 1941 set in? A. I beg your pardon?

Q. How far was your construction along of the warehouses when the war set in? A. That is hard to answer.

Q. Well, was your building 50 per cent complete, 75 per cent, or only 10 per cent? A. I can't remember that.

Q. You can't remember? A. No.

Q. When did you start construction? A. It must be in the last part of 1941. I remember that at Pearl Har-
340 bor, we were about starting building those warehouses.

Q. I see. You completed them during 1942? A. Yes.

Q. Were those warehouses elaborate buildings or very plain buildings? A. No, very plain buildings.

Q. What kind of buildings were they? What were they made of? A. Wood.

Q. Wooden buildings? A. Wood and frame, because we couldn't get steel. And corrugated iron.

Q. So it was a frame building made of wood? A. Yes.

Q. Covered with a zinc roofing; is that it? A. That is correct.

Q. And when your refinery—when you first entered the refining market, there was already a ceiling of the amount of refined sugar that could be introduced into the United States, was there not? A. When we—

Q. When did you first enter the refining business? A. 1938.

Q. 1938? A. Yes.

341 Q. There was already the Jones-Costigan Act on the statute books; is that right, and the 1937 Sugar Act was also already in force, limiting the supply of sugar that could be brought into the United States? A. Yes.

Q. So you entered business with full knowledge that introduction of direct consumption sugar in the United States was limited, did you not? A. I don't know if when we started, or when we were considering in putting in the orders—the refined sugar was limited. I can't recall that.

Q. I mean, the introduction into the United States of refined sugar was limited at the time that you decided to enter this new phase of the industry; is that right? A. Well, when we entered or started refining sugar, that was limited, yes.

. . . . . .

By Mr. Quinn:

Q. Mr. Philippi, you are manager of the refinery, you testified? A. Manager of Igualdad and affiliates.

342 Q. And you testified that the refinery is presently doubling its capacity? A. Yes, sir.

Q. Is this being done on your recommendations? A. Well,—

Q. As manager of the refinery? A. It is made under the decision of the directors.

* * * * * * * * * * *

Q. You are doubling your capacity, though? A. Yes, sir.

Q. Do you know that there is a Federal law restricting the amount of refined sugar you can market in the continental United States for the next five years? A. Yes, we know that.

Q. You are fully aware of that? A. Sure.

Q. In doubling your capacity, where do you expect

343 to market the sugar you will refine? A. In the same places we are doing it now.

Q. In the continental United States? A. In the same places we are doing it now.

Q. And Puerto Rico? A. Puerto Rico and the continental United States.

Q. Where do you expect to get the permission to market the refined sugar your increased capacity will give you? A. Where do we?

Q. Where do you expect to get the permission to market the refined sugar your increased capacity will give you? A. We will ship the quota we get, and we will sell whatever we can get out of the Puerto Rican market.

Q. Where do you expect to get the permission to market the refined sugar that the increased capacity of your refinery will give you? In the continental United States? Where do you expect to get that permission? A. The quota we will get, that is what we will ship.

* * * * * * * * * * *

Redirect Examination

By Mr. Garcia-Mendez:

Q. Do you plan to subscribe for a congressional amendment to the law regarding the sugar that is to be shipped into the continental market, too? A. We are doing it.

344

Q. You have tried that before, too? A. Yes, sir.

Recross Examination

By Mr. Quinn:

Q. One question, Mr. Philippi. Has Igualdad ever petitioned Congress to amend the law for an increased amount of direct consumption sugar that is allowed to come up here from Puerto Rico? A. Wherever we had opportunity to speak to Senators or Congressmen of the United States, we have done it. Through all other ways we have done it.

Q. Did Igualdad appear at any of the congressional hearings when any of these laws were being considered? A. No, we haven't.

Q. Did you appear in 1940? A. No, sir.

Q. Did you appear in 1947 when the 1948 Sugar Act was being considered? A. No, sir.

* * * * * * * * * *

345 By Mr. Garcia-Mendez:

Q. Isn't it a fact, Mr. Philippi, that all sugar producers in Puerto Rico, finally accepted the 1947 Sugar Act as the best that could be obtained under the circumstances at the present moment, but without renouncing the right of further trying to increase the * * * amount of direct consumption sugar that could be brought into the United States?

* * * * * * * * * *

347 Presiding Officer Gifford: Do you have such knowledge as that?

The Witness: I have such knowledge. It is true.

* * * * * * * * * *

Recross Examination

By Mr. Antonsanti:

Q. Mr. Philippi, when you say that the opinion of all sugar producers in Puerto Rico was one of conformity with the 1947 Sugar Act, are you prepared to state that you represent all sugar producers in Puerto Rico in that opinion? A. No, sir.

Q. You do not represent Puerto Rican-American Sugar Refinery? A. No, sir.

Q. Do you know the views of the Puerto Rican-American Sugar Refinery? A. I believe so, if I am not wrong, that you stated that you went to the Congress and asked
348 for eliminating the refined sugar quota.

Q. Then that would indicate that you answer to the question propounded to you by Mr. Garcia-Mendez is not correct; would it not? A. Why?

Q. Because you stated that the opinion of all sugar producers in Puerto Rico was one of conformity with the 1948 Act. Now, I ask you if that opinion is shared by one of the largest refining producers in Puerto Rico. A. Yes.

Q. Do you know whether that opinion is shared by Puerto Rican-American Sugar Refinery, is in conformity with the 1948 quotas?

* * * * * * * * * *

Q. Then your statement is not entirely correct. If one member of the sugar producers of Puerto Rico—not the Association, but one member of the collective body of producers was not in conformity with the Act, the 1948
349 Act, your statement would not be correct? A. Well, the law was accepted because there were no other alternatives for Puerto Rico.

Q. Do you know whether or not Puerto Rican-American objected? A. I beg your pardon?

Q. Do you know whether or not Puerto Rican-American objected at the congressional hearings? A. No. I don't know it of my own knowledge.

* * * * * * * * * *

386 **EXHIBITS**

Exhibit No. 1

[7 CFR, Part 821]

DIRECT CONSUMPTION PORTION OF 1948 SUGAR QUOTA FOR PUERTO RICO

NOTICE OF HEARING ON PROPOSED ALLOTMENT

Pursuant to the authority contained in section 205 (a) of the Sugar Act of 1937 (7 U. S. C. 1115 (a)), as amended, extended and re-enacted, particularly by the Sugar Act of 1948 (Pub. Law 388, 80th Cong.), and in accordance with the applicable rules of practice and procedure, as amended (7 CFR 801.20 et seq.), and on the basis of information before me, I, Clinton P. Anderson, Secretary of Agriculture, do hereby find that the allotment of that portion of the 1948 sugar quota for Puerto Rico for consumption in the continental United States which may be filled by direct consumption sugar, pursuant to section 207 (b) of the said act, is necessary to prevent disorderly marketing and importation of such sugar from Puerto Rico and to afford all interested persons an equitable opportunity to market such sugar in the continental United States, and hereby give notice that a public hearing will be held at Washington, D. C., in Room 5085, South Building, United States Department of Agriculture, on December 18, 1947, at 10:00 a.m.

The purpose of such hearings is to receive evidence to enable the Secretary of Agriculture to make a fair, efficient, and equitable distribution of the above-mentioned portion of the 1948 sugar quota for Puerto Rico among persons who bring such sugar into the continental United States.

The Department proposes to allot the 126,033 short tons of sugar, raw value, representing the direct consumption portion of the 1948 quota for Puerto Rico, on the basis of "past marketings" and "ability to market" such sugar, as provided in section 205 (a) of the said act. Equal

weight is given to each of the bases set forth above. It is proposed to measure "past marketings" by using each refiner's average deliveries of such sugar during the period 1935-1941. It is proposed to measure "ability to market" on the basis of the highest one year delivery of direct consumption sugar to the continental United States by each refiner during the calendar years 1935-1947, inclusive. On the basis of information presently available to the Department, the application of the proposed formula will result in allotments as follows:

Name of processor:	*Direct-consumption allotment (short tons, raw value)*
Porto Rico American Sugar Refinery	79,783
Central Aguirre	5,222
Central Guanica	2,848
Central Igualdad	14,026
Central Roig	15,446
Central San Francisco	1,694
Central Camuy	1,845
Unallotted reserve for marketings of raw sugar for direct consumption	5,169
Total	126,033

The basic data used in computing the foregoing allotments are set forth in Exhibits A and B, which are made a part of this proposal and published herewith.

Copies of the foregoing proposal may be obtained from the Hearing Clerk, United States Department of Agriculture, Washington, D. C., or may be examined in the office of the Hearing Clerk.

Issued this 4th day of December 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

EXHIBIT A

ENTRIES OF PUERTO RICAN DIRECT CONSUMPTION SUGAR, BY MILLS 1935-47 [1]

[Short tons, raw value]

Mill	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947 [2]
Puerto Rican American Refinery	116,611	109,945	97,498	95,756	99,041	102,401	79,237	55,888	66,706	[4] 47,792	56,566	57,141	60,820
Aguirre	2,719	2,496	5,767	3,443	1,170	5,562	3,534	1,591	689	0	3,929	10,640	10,654
Roig El Ejemplo & Roig	—	2,778	16,204	12,379	18,000	28,657	15,028	14,543	15,777	13,483	16,863	[5] 24,414	27,246
Guanica	1,015	—	—	3,905	4,982	4,648	4,668	2	4,...	—	—	—	—
Igualdad-Western	163	438	52	5,774	11,847	25,598	13,017	17,365	17,765	14,632	24,655	27,767	29,965
Comp. Azucarera del Camuy, Inc.; Soller y Rio Llano	—	—	—	—	2,559	2,592	3,742	—	—	—	—	—	—
San Francisco	2,463	2,590	1,981	1,806	1,688	1,773	1,767	1,749	296	0	64	1,324	1,378
Total refined and turbinado	122,971	118,247	121,502	123,123	139,287	171,231	120,993	91,138	105,544	75,907	102,077	121,286	—
Raws for D. C. in continental United States [6] [7]	4,523	8,333	4,543	200	9,736	3,752	5,099	4,936	2,045	2,259	6,823	167	—
Total	127,494	126,580	126,045	123,323	149,023	174,983	162,092 [a]	96,074	107,589	78,166	108,900	121,543 [b]	130,063

[1] Refined and turbinado only shown by mills.
[2] Successor to Igualdad 1943.
[3] Includes 1,307 short tons of 1946 crop sugar entered Jan. 4, 1947.
[4] Includes 6,622 short tons turbinado sugar shipped by Mercedita.
[5] Allotments as made pursuant to terms of Commodity Credit Corp. purchase contract.
[6] 12-year average deliveries equal 4,368 short tons, raw value.
[7] 7-year (1935-41) average deliveries equal 5,169 short tons, raw value.
[a] Should read 126,092, see p. 38 supra.
[b] Should read 121,453, see p. 38 supra.

Source: Official statistics Sugar Branch, P. M. A., U. S. Department of Agriculture.

EXHIBIT B

PROPOSED FORMULA FOR ALLOTTING THE 1948 PUERTO RICAN DIRECT CONSUMPTION QUOTA OF 126,033 SHORT TONS, RAW VALUE

Refinery (1)	Ability to market 50% weight: Highest 1 year marketings in 13 years 1935 to 1947, inclusive — Short tons (2)	Ability to market 50% weight: Highest 1 year marketings in 13 years 1935 to 1947, inclusive — Raw value (3)	Past marketings 50% weight: Average deliveries 1935-41 Short tons of sugar, raw value (4)	Column 3+4÷2 (5)	Multiply column 5×6 (6)	Individual refinery allotment 120,864 short tons, raw value (7)
Puerto Rican American Sugar Refinery	1935	116,611	100,070	108,340	.73640983	79,783
Central Aguirre	1947	[1] 10,654	3,527	7,091	.73640983	5,222
Central Guanica	1939	4,982	2,754	3,868	.73640983	2,848
Central Igualdad-Western	1947	[1] 29,965	8,127	19,046	.73640983	14,026
Central Roig-El Ejemplo	1940	28,657	13,292	20,975	.73640983	15,446
Central San Francisco	1936	2,590	2,010	2,300	.73640983	1,694
Compania Azucarera del Camuy	1941	3,742	1,270	2,506	.73640983	1,845
Total		197,201	131,050	164,126		120,864
Unallotted reserve for marketing of raw sugar for direct consumption in the United States—average 1935-41						5,169
Total 1948 allotment						126,033

[1] These figures subject to revision when final 1947 outturn weight and polarization officials determined.

[F. R. Doc. 47-10776; Filed, Dec. 5, 1947; 8:52 a.m.]

401 **Exhibit No. 3**

DESIGNATION OF REPRESENTATIVE OF THE DEPARTMENT AT THE HEARING WITH RESPECT TO THE ALLOTMENT OF THE DIRECT CONSUMPTION PORTION OF THE 1948 SUGAR QUOTA FOR PUERTO RICO

Pursuant to Section 801.27(b)(1)(i) of the regulations governing allotments of sugar quotas (12 F.R. 8226), I hereby designate Chester E. Davis of the Sugar Branch of the Production and Marketing Administration to represent the Department of Agriculture at the hearing to be held December 18, 1947, with respect to the allotment of the direct consumption portion of the 1948 sugar quota for Puerto Rico.

JAMES H. MARSHALL,
Director, Sugar Branch

402 **Exhibit No. 4.**

REFINERY CAPACITY—PUERTO RICO FROM SURVEY BY SAN JUAN OFFICE OF P.M.A. OCTOBER 13, 1947 [1]

Name of Refinery	Average Production of Best 5 Consecutive Days Tons	Annual Average Run [2]	Total Capacity Short Tons	Production Period on Which Data in Column 2 Are Based
Puerto Rico-American	656.40	300	196,920	Feb. 12 to 16, 1947
Aguirre	242.80	125	30,350	May 6 to 10, 1947
Guanica	176.32	300	52,896	March 11 to 15, 1947
Igualdad	227.89	300	68,367	April 21 to 25, 1947
Roig	368.52	300	110,556	March 29 to April 2, 1947
San Francisco	25.61	125	3,201	March 26 to 30, 1947
Camuy [2]	75.64	300	22,692	——
Total	——	—	484,982	

[1] No data received from Central Camuy on 1947 rate of production.

[2] Capacity data shown in Puerto Rican Sugar Order No. 13 of January 5, 1939.

[3] 300 day basis for mills manufacturing refined sugar and 125 day basis for mills manufacturing washed or turbinado sugar.

404 **Exhibit No. 6**

DELIVERIES OF REFINED AND TURBINADO SUGAR FOR LOCAL CONSUMPTION IN PUERTO RICO BY CERTAIN MILLS, JANUARY 1-NOVEMBER 29, 1947 (Short tons, 96° basis)

Mill	*1947*
Puerto Rican	
American Sugar Refinery, Inc.	22,384
Aguirre	30
Roig Refining Company	16,675
Guanica	14,817
Western Sugar Refining Co.	16,453
San Francisco	58
Total	70,417

SOURCE: Report from Caribbean Area Office, U.S.D.A., P.M.A. in San Juan, P. R.

405 **Exhibit No. 7**

(Exhibit 21 from Hearings on Revision of Sugar Order No. 10 Allotment of 1938 Puerto Rican Sugar Quota and Allotment of Local Consumption Quota Held May 4, 1938)

Deliveries of Sugar to Local Consumption by Puerto Rican Processors During 1935 (Includes Raws)

Mill	Amount Delivered
Aguirre	8,090
Boca Chica	
Cambalache	2,437
Canovanas	1,882
Caribe	631
Carmen	1,057
Coloso	1,461
Constancia-Ponce	
Constancia-Toa	1,533
Eastern Sugar	5,845
El Ejemplo	976
Eureka	774
Fajardo	332
Guamani	612
Guanica	11,528
Hermina	82
Igualdad	836
Juanita	866
Lafayette	806
Mercedita	
Monserrate	820
Pellejas	38
Plata	997
Playa Grande	243
Plazuela	2,066
Rochelaise	743
Roig	1,717
Rufina	10
San Francisco	645
San Vicente	1,792
Santa Barbara	173
Soller	304
Vannina	1,041
Victoria	1,112
P. R. Am. Ref.	6,649
Total	58,098

All figures in tons of 2,000 pounds, sugar, in terms of commercial weight.

Data obtained from the records of the Sugar Section, Agricultural Adjustment Administration, San Juan, Puerto Rico.

Exhibit No. 8

(Exhibit 21 from Hearings on Revision of Sugar Order No. 10 Allotment of 1938 Puerto Rican Sugar Quota and Allotment of Local Consumption Quota Held May 4, 1938)

DELIVERIES OF SUGAR TO LOCAL CONSUMPTION BY PUERTO RICAN PROCESSORS DURING 1936 (Includes Raws)

Mill	*Amount Delivered*
Aguirre	7,010
Boca Chica	
Cambalache	2,558
Canovanas	3,979
Caribe	421
Carmen	1,114
Coloso	3,536
Constancia-Ponce	
Constancia-Toa	1,474
Eastern Sugar Associates	5,686
El Ejemplo	227
Eureka	902
Fajardo	221
Guamani	968
Guanica	12,269
Hermina	114
Igualdad	674
Juanita	558
Lafayette	560
Mercedita	
Monserrate	141
Pellejas	137
Plata	1,036
Playa Grande	200
Plazuela	3,053
Rochelaise	796
Roig	3,372
Rufina	359
San Francisco	391
San Vicente	2,241
Santa Barbara	220
Soller	368
Vannina	1,396
Victoria	1,232
P. R. Am. Ref.	9,105
Total	66,318

All figures in tons of 2,000 pounds, sugar, in terms of commercial weight.

Data obtained from the records of the Sugar Section, Agricultural Adjustment Administration, San Juan, Puerto Rico.

407 **Exhibit No. 9**

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

WASHINGTON, D. C.

(Puerto Rico Sugar Order No. 3)

ALLOTMENT OF QUOTA FOR DIRECT CONSUMPTION SUGAR FOR PUERTO RICO

ORDER MADE BY THE SECRETARY OF AGRICULTURE UNDER THE AGRICULTURAL ADJUSTMENT ACT

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act, approved May 12, 1933, (hereinafter called the "Act"), as amended, I, R. G. Tugwell, Acting Secretary of Agriculture, having due regard to the welfare of domestic producers, and to the protection of the domestic consumers and to a just relation between the prices received by domestic producers and the prices paid by domestic consumers, in order to effectuate the declared policy of the said Act, and upon the basis of the findings hereinafter set forth, do hereby make, issue, publish and give public notice of the orders hereinafter set forth with the force and effect of law, to be in force and effect until amended or superseded by orders or regulations hereafter made by the Secretary of Agriculture:

ARTICLE I—FINDINGS

By virtue of the foregoing authority, and being fully advised in the premises, I, R. G. Tugwell, Acting Secretary of Agriculture, do hereby make the following findings:

1. That pursuant to the provisions of section 8a (1) (A) (ii) of the Act, the Secretary of Agriculture, in General Sugar Quota Regulations, Series 2, executed on January 5, 1935, has determined that of the years 1931, 1932, and 1933, the greatest quantity of direct consumption sugar brought into or imported into continental United States for consumption, or which was actually consumed therein, from Puerto Rico was during the year 1933, which quantity was 133,119 short tons, raw value.

2. That of the said total of 133,119 short tons of direct consumption sugar brought into or imported into continental United States from Puerto Rico during 1933, 123,529 short tons, raw value, consisted of refined sugar, and
408 9,590 short tons, raw value, consisted of sugar which was not refined. (As used in this Order, the term "refined sugar" means any sugar manufactured in Puerto Rico by a recognized remelting and recrystallization refining process, except those sugars commonly known in the sugar trade as turbinado sugars.)

3. That during the year 1933, the only persons producing for shipment to continental United States for consumption therein refined sugar from Puerto Rico as direct consumption sugar were the Porto Rican American Sugar Refining Company and the South Porto Rico Sugar Company of Puerto Rico, which companies have agreed with each other and with the Secretary of Agriculture that the percentages of such sugar imported by each of said companies for the purposes of this Order, were 95.70% and 4.30% respectively.

ARTICLE II—ORDERS

On the basis of the foregoing findings, and pursuant to the authority vested in the Secretary of Agriculture as aforesaid, it is hereby ordered:

1. Of the quota of 133,119 short tons, raw value, of Puerto Rico direct consumption sugar which may be transported to, received in, or marketed in continental United States during the calendar year 1935, a quantity not exceeding 9590 short tons, raw value, may be transported to, received in, or marketed in continental United States other than as refined sugar as hereinabove defined; and a quantity not exceeding 123,529 short tons, raw value, may be transported to, received in, or marketed in continental United States as refined sugar, as hereinabove defined.

2. That the quantity of refined sugar which may be transported to, received in, or marketed in continental United States for direct consumption therein during the calendar year 1935, as fixed pursuant to section 1 of this Order, is hereby allotted as follows:

(a) To Porto Rico American Sugar Refining Company, 118,217 short tons, raw value;

(b) To South Porto Rico Sugar Company of Puerto Rico, 5,312 short tons, raw value.

3. Notwithstanding the provisions of this Order, no direct consumption sugar shall be transported to or received in continental United States for consumption therein unless such sugar is identified as being within a marketing allotment under the provisions of Puerto Rico Sugar Order No. 2, executed by the Secretary of Agriculture on February 23, 1935, and unless such sugar has been processed and/or is being marketed in accordance with all the provisions of said Order.

4. No person shall, during the calendar year 1935:

(a) Buy, sell, or transport to or market in continental United States for consumption therein, direct consumption sugar from Puerto Rico other than refined sugar, unless the Secretary shall determine that such sugar, together with all amounts theretofore received in continental United

States is not in excess of 9,590 short tons, raw value, and complies with all the provisions of this Order;

(b) Buy, sell, or transport to, or market in continental United States for consumption therein, direct consumption sugar from Puerto Rico in the form of refined sugar in excess of the allotment given to him under this Order, and unless the Secretary determines that the quantity so transported or received is within such allotment and is in accordance with the provisions of this Order.

5. Whenever any person considers himself aggrieved because of any allotment heretofore made to him or to any other person, or because he has received no allotment, or because of any provision of this Order, he may make application in writing, under oath, to the Secretary for the adjustment of such allotment theretofore made, or for an allotment or for the modification of such provision of this Order, which application shall fully set forth reasons therefor and data in support thereof. Such person shall be entitled to due notice and opportunity for hearing with respect to such application, if on the basis of such application and supporting data, the Secretary determines that the facts therein contained present a reasonable basis and cause for hearing. Any such hearing shall be held pursuant to applicable regulations issued by the Secretary. The Secretary of Agriculture may, to effect the purposes of section 8a (1) of the Act, after such hearing, grant or deny, in whole or in part, such application and accordingly adjust, revoke, or grant the allotment, or modify the provision of this Order which is involved.

6. If any provision of this Order is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of such provision and/or of the remainder of this Order and/or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

7. The Secretary may by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the Department of Agriculture, to act as his agent or agency in connection with any of the powers provided in this Order to be exercised by the Secretary.

In testimony whereof, R. G. Tugwell, Acting Secretary of Agriculture, has issued this Order and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 2nd day of April 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

410 **Exhibit No. 10**

UNITED STATES DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMIN.
SUGAR BRANCH
WASHINGTON 25, D. C.

June 10, 1947

Mr. Arthur L. Quinn
Counsellor at Law
726 Jackson Place, N.W.
Washington, D. C.

Dear Mr. Quinn:

This is in reply to your letter of May 26, 1947, in which you request that we reconsider our decision with respect to the quantity of 1946-47 crop Puerto Rican raw sugar Commodity Credit Corporation will approve for release to the Porto Rican American Sugar Refinery, Inc. for the manufacture of direct consumption sugar for shipment to the United States. After carefully considering your request, this is to inform you that we are unable to change our decision with respect to this matter.

As you are aware, it has been the policy of the Department of Agriculture since the inception of wartime controls

to exercise such controls in such manner as not to disturb the prewar competitive positions of the various segments of the sugar industry. This policy was adopted as we believe that when controls are removed the various segments of the industry should, insofar as possible, occupy the same relative positions as they occupied prior to such controls. Although the quota provisions of the Sugar Act of 1937, as amended, have been suspended since April 14, 1942, the shortage of sugar has made it necessary for us to exercise allocation controls over refiners. The quotas contained in the Act were established by legislative action, and we feel that, as long as we are exercising allocation controls, any change in these quotas should be made by the legislative branch after giving all segments of the industry an opportunity to present their case with respect to the quota provisions of the Act. We would like to point out that since the suspension of the quota provisions of the Act in 1942, the total amount of direct consumption quota established in the Act for the calendar year 1941 of 126,033 short tons.

The possibility of permitting larger shipments of direct consumption sugar from Puerto Rico to the continental United States, provided Commodity Credit Corporation was given control over the shipment and distribution of such sugar, was also given careful consideration. It was decided, however, that the adoption of such a program at this time would not be consistent with the above-mentioned policy during the period of allocation control.

Very truly yours,

(s) JAMES H. MARSHALL,
Director.

423 CHAPTER VIII—PRODUCTION AND MARKETING ADMINISTRATION (SUGAR BRANCH)

[Puerto Rico Sugar Order 18]

PART 821—SUGAR QUOTAS

Decision and Order of Secretary of Agriculture Allotting Direct-Consumption Portion of 1948 Sugar Quota for Puerto Rico

Basis and purpose. This allotment order is issued under section 205 (a) of the Sugar Act of 1948 (hereinafter called "act"), for the purpose of allotting the direct-consumption portion of the 1948 sugar quota for Puerto Rico among persons who market such sugar in the continental United States. The basis and purpose of the order are more fully explained below.

Omission of recommended decision and effective date. The record of the hearing shows that the capacity of Puerto Rican refineries to produce direct-consumption sugar far exceeds the 126,033 short tons of such sugar which may be marketed in the continental United States under the act and the quantity of such sugar which is distributed annually for local consumption in Puerto Rico (R. 17-18). The proceeding to which this order relates was instituted for the purpose of making allotments so as to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market direct-consumption sugar in the continental United States (Ex. 1). Such proceeding could not be instituted earlier than December 1947, for the reason that the statute under which it was authorized was suspended by Presidential proclamation (R. 255). Some of the allotments made by this order are small and could be exceeded by single shipments of sugar. It is imperative that this order become effective at the earliest possible date in order fully to effectuate the purposes of section 205 (a) of the act. Accordingly, it is hereby found that due and timely execution of the functions

imposed upon the Secretary under the act, imperatively and unavoidably requires the omission of a recommended decision in this proceeding. It is hereby further found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237) is impracticable and contrary to the public interest and, consequently, this order shall be effective when published in the Federal Register.

Preliminary statement. Section 207 (b) of the act provides that not more than 126,033 short tons, raw value, of the sugar quota for Puerto Rico for any calendar year may be filled by direct-consumption sugar.

Under the provisions of section 205 (a) of the act, the Secretary is required to allot a quota or proration thereof whenever he finds that the allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate commerce, (2) to prevent the disorderly marketing of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar or liquid sugar, or (4) to afford all interested persons an equitable opportunity to market sugar or liquid sugar within the quota for the area. Section 205 (a) also provides that such allotment shall be made after such hearing and upon such notice as the Secretary may by regulation prescribe.

On December 6, 1947, the Secretary, pursuant to the applicable rules of practice and procedure (7 CFR 801.20, et seq.; amended by General Sugar Regulations, Series 3, No. 1, 12 F. R. 8225, 13 F. R. 127, 131), issued a notice of a public hearing to be held in Washington, D. C., on December 18, 1947, for the purpose of receiving evidence to enable him to make a fair, efficient, and equitable distribution of the portion of the 1948 sugar quota for Puerto Rico for consumption in the continental United States which may be filled by direct-consumption sugar. The notice of the hearing contained a proposed allotment formula and the allotment which each interested person would receive under that proposal.

Section 205 (a) of the act requires a preliminary finding by the Secretary as a condition precedent to the calling of a hearing. The notice of hearing issued by the Secretary on December 6, 1947, provides in part as follows:

Pursuant to the authority contained in section 205 (a) of the Sugar Act of 1937 (7 U. S. C. 115 (a)), as amended, extended and re-enacted, particularly by the Sugar Act of 1948 (Pub. Law 388, 80th Cong.), and in accordance with the applicable rules of practice and procedure, as amended (7 CFR, 801.20 et seq.); and on the basis of information before me, I, Clinton P. Anderson, Secretary of Agriculture, do hereby find that the allotment of that portion of the 1948 sugar quota for Puerto Rico for consumption in the continental United States which may be filled by direct consumption sugar, pursuant to section 207 (b) of the said act, is necessary to prevent disorderly marketing and importation of such sugar from Puerto Rico and to afford all interested persons an equitable opportunity to market such sugar in the continental United States, and hereby give notice that a public hearing will be held at Washington, D. C., in Room 5085, South Building, United States Department of Agriculture, on December 18, 1947, at 10:00 a.m.

The hearing was held at Washington, D. C., on the date specified in the notice.

On the question of necessity for making allotments, the Government witness testified that on the basis of actual performance for representative periods the potential capacity of Puerto Rican refineries to produce direct-consumption sugar approximates 485,000 short tons of such sugar per year (R. 17-18; Ex. 4). Although from 75,000 to 90,000 short tons of direct-consumption sugar are distributed annually for local consumption in Puerto Rico, this amount, together with the 126,033 short tons of such sugar which may be marketed in the continental United States, is well below the capacity of Puerto Rican refineries to produce such sugar (R. 18). The Government witness then stated that in view of this situation, allotments are neces-

sary to prevent disorderly marketing and to assure each refiner his fair share of the continental market for Puerto Rican direct-consumption sugar (R. 19). The testimony of the Government witness on the question of the necessity for allotments in 1948 was not controverted by any witness.

In regard to the manner in which the allotments should be made, the Government witness testified that one of the standards contained in section 205 (a) of the act, namely, proceedings from sugarcane to which proportionate shares (established under section 302 (b) of the act) pertained, is inapplicable because (1) the great majority of the sugar mills in Puerto Rico which process sugarcane into raw sugar do not produce refined sugar, which constitutes the bulk of the direct-consumption sugar, and (2) some of the refiners of direct-consumption sugar in Puerto Rico do not obtain their raw sugar supplies by processing "proportionate shares" sugarcane, but instead purchase their raw sugar from raw sugar mills (R. 19, and Puerto Rico Sugar Order No. 13, R. 255). The witness concluded that the use of this standard would not result in fair, efficient, and equitable allotments and proposed that the allotments be made on the basis of equal weight to "past marketings" and "ability to market" (R. 21-22). The witness then proposed that past marketings be measured by each refiner's average shipments of direct-consumption sugar to the continental United States during the years 1935-1941, inclusive, and that ability to market be measured by the highest single year's marketings of direct-consumption sugar in the continental United States by each refiner during the years 1935-1947, inclusive (R. 20). As to the measure of ability, the Government witness stated that marketings rather than plant capacity should be used because they afforded a better measure of ability than plant capacity (R. 22, 67), and that the best year's performance during the past 13 years had been selected rather than "current" marketings because this period covered both "free" and restricted years and was deemed a period during which

all the interested parties and adequate opportunity to demonstrate ability (R. 23). The witness stated that a recent investigation in Puerto Rico showed that the present plant capacity of each refiner is well above the marketings for the year selected to measure ability to market (R. 46-47, 68-69; Ex. 4). The period for measuring ability to market was not limited to 1947 or other war or post-war year because of wartime dislocations, some of which extended into the calendar year 1947 (R. 40-43, 69-70, 255-257). The witness stated further that, although marketings during a period of wartime restrictions and dislocations would not alone constitute a fair measure of ability to market,
424 nevertheless demonstrated ability during those years should not be ignored and, accordingly, the period for measuring ability included both war and pre-war years (R. 67-68). As to the measure of past marketings, the Government witness testified that because of the wartime shipping difficulties, Government procurement restrictions, and other wartime dislocations, the war and post-war years were deemed to be unrepresentative of past marketings and were, therefore, excluded (R. 24). The period 1935-1941, inclusive, was considered to be a more normal or representative period and should be used (R. 53). The witness also recommended that 5,169 short tons of sugar be held as an unalloted reserve for persons who bring raw sugar into the continental United States for direct-consumption purposes. The recommended amount is equal to the average quantity of such sugar brought into the States during the years 1935-1941, inclusive (R. Ex. 1).

The witness for Puerto Rican American Sugar Refinery (herein called "Puerto Rican American") made no specific proposal regarding the manner in which the allotment should be made. The testimony of Puerto Rican American was directed primarily to the difficulties experienced by that company during the war and post-war years. In this respect the testimony tended to support the position taken by the Government witness that war years should

be eliminated or their use restricted. Puerto Rican American obtains its raw sugar from a nearby affiliated central (raw mill) and from a number of independent centrals located at varying distances from the refinery (R. 93, 208-211). The Puerto Rican American witness testified at some length as to how the various restrictions and controls during the war and post-war years had hampered the production and movement of direct-consumption sugar by that company. The rationing of gasoline and tires and the regulation of transportation by trucks interfered with the movement of raw sugar to the refinery and of direct-consumption sugar to shipping ports (R. 157-160). Lack of adequate and timely shipping to move sugar to the continental United States created storage problems (R. 157), which at times slowed down or stopped production (R. 162, 185, 238-239). Other difficulties related to a shortage of bags for both raw and direct-consumption sugar (R. 158) and to the steps necessary to meet "black-out" regulations (R. 158-159). The witness stated that the shipping difficulties experienced by Puerto Rican American were greater than those experienced by other refineries in Puerto Rico because of the greater quantity of sugar which they had to ship (R. 181, 226). The amount of raw sugar which could be refined from the 1944, 1945, 1946, and 1947 crops was controlled by the Commodity Credit Corporation (R. 162-163). The witness testified that Puerto Rican American had planned to ship 85,000 tons of sugar to the continental United States in 1947, but was limited to approximately 60,000 tons by the Commodity Credit Corporation (R. 165-166; Ex. 10).

The witness for Central Roig Refining Company (herein called "Roig") testified that many changes have occurred in the refining situation in Puerto Rico during the past ten years. Some refiners have increased their capacity, some have marketed relatively more direct-consumption sugar in Puerto Rico than in the continental United States, and some have extended considerably the period during the

year in which they make refined sugar (R. 113). Roig has increased its capacity to produce direct-consumption sugar and has increased its marketings of such sugar both in the continental United States and in Puerto Rico (R. 114). The witness stated that in view of these changes, the years 1938-1947, inclusive, constitute a representative period for measuring past marketings (R. 15). The witness stated that it is unfair to include years prior to 1938 because some refineries, including Roig, did not operate in all of the years 1935, 1936, and 1937 (R. 115). The use of the period 1935-1941, inclusive, was said to be unrepresentative and discriminatory against Roig and Igualdad (Western Sugar Refining Company) and preferential to their competitors (R. 115-116). The witness stated further that the selection of the highest one year's delivery during the period 1935-1947, inclusive, as proposed by the Government witness, was inadequate because marketings from 8 to 13 years in the past were no indication of present ability to market sugar (R. 116-117). "Ability to market" refers to ability to market in the continental United States and, to the extent that any refiner has, in recent years, elected to reduce its continental marketings in order to increase local marketings in Puerto Rico, its ability has decreased (R. 117). Ability to market in any year should be measured by marketings during the next preceding year (R. 116). The witness for Roig then proposed that allotments be made by giving equal weight to past marketings and ability to market, but that past marketings be measured by the average of such marketings for the period 1938-1947, inclusive, and that ability to market be measured by marketings during 1947 (R. 118-119). The witness further proposed that the unallotted reserve be determined on the basis of marketings of raw sugar for direct-consumption during the years 1938-1947, inclusive (R. 119). The witness stated that his recommendation was in line with the action taken by the Secretary in alloting the direct-consumption portion of the Puerto Rican sugar quota for prior years (R. 119-120). The witness also asked that if the Secretary is re-

quired by law to give consideration to processing from proportionate shares some small weight be given that factor (R. 121). On cross-examination the witness testified that Roig experienced no shipping or other difficulties during the war period (R. 122-127, 147-149). Roig also presented evidence (Exs. 11, 12, and 13) to show that during the war and post-war years the three largest refiners in Puerto Rico (Puerto Rican American, Roig, and Igualdad) had greatly increased their local marketing of direct-consumption sugar but that Puerto Rican American had been able to do so only by decreasing its shipments of such sugar to the continental United States (R. 247-252).

The witness for Western Sugar Refining Company (herein called "Igualdad") objected to the formula proposed by the Government witness on the grounds that (1) ability to market is measured by marketings in too remote a period (R. 293-297), and (2) the period for measuring past marketings includes largely years in which marketing restrictions were in effect (R. 297). The Igualdad witness then proposed that allotments be made by giving equal weight to past marketings and ability to market, but that past marketings be measured by the average marketings of direct-consumption sugar in the continental United States during the years 1938-1947, inclusive, and that ability to market be measured by marketings of direct-consumption sugar in the continental United States during 1947 (R. 298-299). The witness recommended that the unallotted reserve be handled in the manner proposed by the Government witness (R. 299; Ex. 14). Igualdad also presented evidence (Exs. 15 and 16) to show that during the years 1942-1947, inclusive, Puerto Rican American increased its local sales of direct-consumption sugar but at the expense of its continental marketings, whereas Igualdad and Roig were able to increase their marketings of direct-consumption sugar both in Puerto Rico and in the continental United States during those years (R. 301-303). The witness stated further that if the Secretary is required by law to consider processings from proportionate shares, some weight be

given that factor (R. 306). The Igualdad witness stated that his company experienced some difficulties from wartime controls and restrictions, but was able to overcome them without due interference with production and marketing operations (R. 335-338).

Basis of allotment. Section 205 of the act reads in pertinent part as follows:

* * * Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processings of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person; and the ability of such person to market or import that portion of such quota or proration thereof allotted to him. * * *

The standard "processings of sugar—from—sugarcane to which proportionate shares—pertained" is not applicable to the allotment of the direct-consumption portion of the Puerto Rico sugar quota. The statute obviously refers to the processings of sugar from sugarcane by the prospective allottee. Normally sugar processed from sugarcane is in "raw" form and must be refined to produce what is commonly referred to as direct-consumption sugar. The three largest refiners in Puerto Rico (Puerto Rican American, Roig, and Igualdad) do not process raw sugar from sugarcane, but instead obtain their raw supplies from affiliated mills or from completely independent sources (R. 425 141-145; 208-209; Gilmore's Puerto Rico Sugar Manual, 1946-1947, p. 167, R. 261-262). These three refiners are separate and distinct corporations (Gilmore's Puerto Rico Sugar Manual, 1946-1947, pp. 167, 182, 198) and their operations must be viewed separate and apart from the operations of any affiliated company for the purpose of making allotments under section 205(a) of the act. Furthermore, the use of this standard would make all of the raw sugar mills in Puerto Rico eligible for an allotment

of direct-consumption sugar, although the great majority of these mills do not make refined sugar which constitutes the bulk of the Puerto Rican direct-consumption sugar (Puerto Rico Sugar Order No. 13, R. 255). Under the circumstances, the use of this standard is not considered mandatory.[1]

The other two standards specified in the act, namely, "past marketings" and "ability to market," are applicable and equal weight should be given to them in order to provide a "fair, efficient, and equitable distribution" of that portion of the quota to be allotted.

In determining past marketings, it is necessary to select a representative period which is fair and equitable to all refiners in Puerto Rico. The years selected should properly reflect the normal history of the individual company. Insofar as possible, each year selected should be a normal year. Ordinarily the most recent period of marketings recommends itself as reasonable. The past six years, however, represent a period of great abnormality for the sugar industry. From April 1942 until recently a national emergency has existed with respect to sugar (R. 255). Sugar was under price control from August 1941 until October 1947 (R. 256-257) and it was rationed from April 1942 until mid-year 1947 (R. 247). There was wartime control of both imports and exports of sugar and these controls were in effect until October 1947 (R. 255-256). Raw sugar was allocated to refiners in continental United States (R. 256) and similar allocations were made to refiners in Puerto Rico under the terms of crop purchase contracts between the Commodity Credit Corporation and Puerto Rican sugar producers (R. 162-163). Also, under the terms of the 1947-crop purchase contract, the Commodity Credit Corporation limited the amount of direct-consumption sugar which each Puerto Rican refiner could bring into the continental United States during 1947 (R. 165; Ex. 10). The "allotments" to Puerto Rican refiners for 1947 were made pursuant to spe-

[1] It was argued in the brief filed on behalf of Central Guánica (South Porto Rico Sugar Company) that the use of this standard was mandatory.

cific provisions of the purchase contract and not pursuant to the provisions of the act (R. 41-42; Ex. 10). Puerto Rico experienced many wartime land and water transportation difficulties, storage problems and shortages of bags and other essential materials. The impact of these and other dislocations affected refiners in varying degrees (Cf. Roig, R. 122-127, 147-149, and Puerto Rican American, R. 157-158, 160, 162, 185-225-230). It is apparent from the record that the past six years are not representative years for past marketings and should not be used. The pre-war years 1935-1941, inclusive, are deemed to constitute a representative period for measuring past marketings. However, some recognition should be given to those refiners who did not operate in all those seven years (R. 115), and therefore, it is believed that the use of each refiner's average of the highest five years of marketings during such seven-year period will afford a fair and equitable measure of past marketings.

In determining ability to market, actual performance is considered a better measure than plant capacity. Therefore, this factor has been used in making allotments and plant capacity has served only as a check on the accuracy of the results. It seems more reasonable to measure ability by marketings over a relatively short period, since the use of an extended period would, in effect, give undue weight to past marketings. Marketings for a period of one year are deemed to constitute an adequate measure of ability. Under normal circumstances the selection of a recent year to measure ability would seem reasonable. The past six years, however, have been abnormal years for the sugar industry in Puerto Rico and elsewhere. Therefore, the selection of a recent year to measure ability for all Puerto Rican refiners would not be fair to some, and would not properly measure their ability. It is deemed fair to select a recent year from any refiner who despite wartime difficulties, has been able to demonstrate greater ability than was demonstrated during pre-war years. Due to the nature of the factors to be measured, it is considered appropriate in

measuring ability to use war and post-war years, although they have not been used in measuring past marketings because they were not deemed properly to represent the past performance of individual companies. Ability to market should be recognized under whatever conditions demonstrated, although the year selected may not for other purposes be regarded as normal or representative. In fairness to those refiners on whom the impact of war was greatest, it is considered fair and reasonable to select a pre-war year as a proper measure of their ability. Therefore, the best single year's performance during the past 13 years is deemed to afford a fair and equitable measure of the ability of each refiner to market direct-consumption sugar.

It is deemed desirable to reserve 5,169 short tons of sugar to be set aside for persons who bring in raw sugar from Puerto Rico for direct-consumption purposes, which amount represents the average quantity of such sugar brought in for direct-consumption during the years 1935-1941. It is not considered practicable to allot this quantity of sugar to individual mills, inasmuch as it would have to be allotted to 34 raw sugar mills, thereby rendering it impossible to make an efficient allotment as required by the act. (Puerto Rico Sugar Order No. 13, R. 255.) An allotment of this additional amount of sugar would require continental purchasers of raw sugar for direct-consumption to deal with a large number of sellers in order to obtain their requirements. Such disruption of customary trade practices could not reasonably be said to be an efficient distribution of this kind of sugar.

Findings. On the basis of the record of the hearing, I hereby find that:

1. The statutory standard of "processings of sugar * * * from * * * sugarcane to which proportionate shares * * * pertained" is not applicable to the allotment of the direct-consumption portion of the Puerto Rican sugar quota and the use of this standard is not mandatory.

2. On the basis of actual performance for representative periods, the potential capacity of Puerto Rican refiners to produce direct-consumption sugar during the calendar year 1948 is approximately 485,000 short tons of such sugar.

3. The amount of direct-consumption sugar which Puerto Rican refiners are equipped to produce in 1948 exceeds by more than one hundred percent the quantity of direct-consumption sugar which may be brought into the continental United States during 1948 and the quantity of such sugar needed for local consumption in Puerto Rico during 1948.

4. Due to wartime shipping difficulties, Government procurement programs and restrictions, and other wartime dislocations, the years 1942-1947, inclusive, are unrepresentative of past marketing history of Puerto Rican refiners and the use of such years would not result in a fair, efficient, and equitable distribution of the direct-consumption portion of the Puerto Rican sugar quota.

5. A fair and equitable measure of past marketings for each refiner is the average of the highest five years' marketings of direct-consumption sugar ~~in the~~ continental United States during the seven years 1935-1941, inclusive, and the past marketings of each refiner so measured are as follows:

Refiner	Short tons, raw value
Puerto Rican American Sugar Refinery	[1]105,039
Central Aguirre	[2]4,205
Central Roig Refining Co.	[3]18,054
Central Guanica	[4]3,856
Western Sugar Refining Co. (Igualdad)	[5]11,335
Central San Francisco	[6]2,123

[1] Average of years 1935, 1936, 1937, 1939, 1940.
[2] Average of years 1935, 1937, 1938, 1940, 1941.
[3] Average of years 1937, 1938, 1939, 1940, 1941.
[4] Average of years 1935, 1938, 1939, 1940, 1941.
[5] Average of years 1936, 1938, 1939, 1940, 1941.
[6] Average of years 1935, 1936, 1937, 1938, 1940.

6. The use of plant capacity does not afford a fair and equitable measure of the ability of Puerto Rican refiners to market direct-consumption sugar in the continental United States in 1948.

7. Marketings of direct-consumption sugar in the continental United States constitute a fair and equitable measure of the ability of Puerto Rican refiners to market direct-consumption sugar in the continental United States in 1948.

8. Due to wartime shipping difficulties, Government procurement programs and restrictions and other wartime dislocations, the use of marketings in the continental United States in 1947 or in any other year during the period 1942-1947, inclusive, as the sole measure of ability to market does not provide a fair and equitable measure of such ability for all Puerto Rican refiners.

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9. A fair and equitable measure of the ability of each refiner to market direct-consumption sugar in the continental United States is the highest single year's marketings therein during the period 1935-1947, inclusive, and the ability of each refiner so measured is as follows:

Refiner	Short tons, raw value
Puerto Rican American Sugar Refinery	[7]116,611
Central Aguirre	[8]10,535
Central Roig Refining Co.	[9]28,657
Central Guanica	[10]4,982
Western Sugar Refining Co. (Igualdad)	[11]29,908
Central San Francisco	[12]2,590

[7] 1935.
[8] 1947.
[9] 1940.
[10] 1939.
[11] 1947.
[12] 1936.

10. A small part of the direct-consumption portion of the Puerto Rican sugar quota is normally brought into the continental United States as raw sugar for direct-consumption.

11. The average annual quantity of raw sugar brough into the continental United States for direct-consumptio during the years 1935-1941, inclusive, which are representa tive years, was 5,169 short tons, raw value.

12. Compania Azucarera del Camuy will not market di rect-consumption sugar in the continental United States i 1948[2] and no allotment for that company is required for th calendar year 1948.

Conclusions. On the basis of the foregoing, and afte consideration of the briefs submitted by interested person following the hearing, I hereby determine and conclude (1) that the allotment of the direct-consumption portion o the 1948 sugar quota for Puerto Rico is necessary to prevent disorderly marketing of such sugar and to afford all inter ested persons an equitable opportunity to market such sugar in the continental United States (2) that in order to make a fair, efficient, and equitable distribution of the direct-con sumption portion of such quota, as required by section 20 (a) of the act, allotments should be made by giving equal weight to (a) past marketings, measured by the average of the highest five years of such marketings by each refiner during the period 1935-1941, inclusive, and (b) ability to market, measured by the highest single year's marketings during the period 1935-1947, inclusive and (3) that an unallotted reserve of 5,169 short tons of sugar, raw value, should be set aside for persons who bring raw sugar into the continental United States for direct consumption.

Order. Pursuant to the authority vested in the Secre tary of Agriculture by section 205 (a) of the act, it is hereby ordered:

§ 821.51. *Direct-consumption portion of the 1948 sugar quota for Puerto Rico*—(a) *Allotments.* The direct-con sumption portion of the 1948 sugar quota for Puerto Rico (126,033 short tons, raw value) is hereby allotted to the

[2] The record indicates that this company is not now engaged in the manu facture of refined sugar (R. 331-332).

following companies in the amounts which appear opposite their respective names:

Refiner	Direct-consumption allotment (short tons, raw value)
Puerto Rican American Sugar Refinery	79,258
Central Aguirre	5,291
Central Roig Refining Co.	16,698
Central Guanica	3,160
Western Sugar Refining Co. (Igualdad)	14,772
Central San Francisco	1,685
	120,864
Unallotted reserve for marketing of raw sugar for direct-consumption	5,169
	126,033

(b) *Restrictions on shipment.* Each of the companies named in paragraph (a) of this section is hereby prohibited from bringing into the continental United States, for consumption therein, during the calendar year 1948, any direct-consumption sugar (except such amount of raw sugar as may be brought in within the unallotted reserve) from Puerto Rico in excess of the marketing allotment therefor established in paragraph (a) of this section. (Sec. 205 (a) of Pub. Law 388, 80th Cong.)

Done at Washington, D. C., this 16th day of January 1948. Witness my hand and seal of the Department of Agriculture.

CLINTON P. ANDERSON,
Secretary of Agriculture.

(Seal)

[F. R. Doc. 48-621; Filed, Jan. 21, 1948; 8:45 a.m.]

432 Endorsement: Received Feb 5 1948 1:30 p.m. The Hearing Clerk U. S. Dept. of Agr. Office of Solicitor.

IN THE UNITED STATES DEPARTMENT OF AGRICULTURE

Docket No. SH-68

In the matter of

Allotment of Portion of 1948 Sugar Quota for Puerto Rico for Direct Consumption in the Continental United States.

Petition For Stay And Reconsideration of Order.

I.—PETITION.

Central Roig Refining Company and the Western Sugar Refinery Company respectfully petition that Puerto Rico Sugar Order 18 entitled "Decision and Order of the Secretary of Agriculture Allotting Direct Consumption Portion of 1948 Sugar Quota for Puerto Rico," published in the Federal Register January 22, 1948 (13 F. R. 310-313) and effective when so published, be reconsidered by the Secretary of Agriculture and pending such reconsideration be stayed or vacated.

II.—REASONS FOR PETITION.

Following the hearing in the above entitled matter December 18 and 19, 1947, the Secretary issued, and on January 22, 1948, made public and immediately effective, Order 18. Prior thereto neither the Presiding Officer nor any responsible officer of the Department of Agriculture made any recommended decision, and the Secretary without having presided at the reception of the evidence and without having first issued a tentative decision, made his final decision in the matter. This procedure was followed notwithstanding the "Request as to Subsequent Procedare" in the brief of Central Roig Refining Company (p. 22).

Further, Order 18 was made effective immediately on publication without waiting for the 30-day period provided by section 4(c) of the Administrative Procedure Act.

433 In consequence petitioners have been afforded no opportunity prior to the time Order 18 became final and effective to except to the findings in the Order with supporting reasons or to present argument that the Order is contrary to law on the following grounds:

A. Order 18 is beyond the authority conferred on the Secretary by section 205(a) of the Act in that—

1. The decision making allotments takes into consideration a standard not permitted by section 205(a), namely, restoration of prewar competitive conditions among the allottees.

2. The decision making allotments fails to take into consideration one of the three standards specified by section 205(a), namely, processings by the allottee of sugar to which proportionate shares pertained.

3. The decision making allotments is based on erroneous constructions and applications of the other two standards specified by section 205(a), namely, past marketings of the allottee, and the ability of the allottee to market the allotment made to him.

B. If Order 18 is within the authority conferred on the Secretary by section 205(a) of the Act, then said section is unconstitutional in that it authorizes discrimination between allottees that is so gross as to be contrary to the due process clause of the Fifth Amendment to the Constitution.

C. Order 18 is invalid since the aggregate of allotments therein is based on section 207(b) of the Act and said section imposes on Puerto Rican refiners of sugar a discrimination so gross as to be contrary to the due process clause of the Fifth Amendment to the Constitution.

434 D. Order 18 is invalid in that certain findings therein of the Secretary, Nos. 1, 4, 5, 6, 7, 8, and 9,

are not supported by substantial evidence of record but are arbitrary and capricious.

It is therefore submitted that Order 18 should be reconsidered by the Secretary and petitioners should be afforded opportunity to except to the findings of fact with supporting reasons and to argue orally or by brief all questions of law relating to the validity of the Order, and that Order 18 should be stayed or vacated pending such reconsideration.

Respectfully submitted,

FREDERIC P. LEE,
Attorney for Central Roig Refining Company and Western Sugar Refinery Company.
Address: 1200-18th Street, N.W.,
Washington 6, D. C.

435 Denial of Petition for Stay and Reconsideration of Order.

Feb. 11 1948

Mr. Frederic P. Lee
Attorney for Central Roig Refining Company and
Western Sugar Refining Company
1200 18th Street, Northwest
Washington, D. C.

Dear Mr. Lee:

Consideration has been given to your "Petition for Stay and Reconsideration of Order" allotting the direct consumption portion of the 1948 sugar quota for Puerto Rico, filed February 5, 1948, on behalf of Central Roig Refining Company and Western Sugar Refining Company, and to the views expressed in the conference yesterday in the office of the Director of the Sugar Branch, Production and Marketing Administration, in regard to this matter.

For reasons more fully explained in the decision issued with the Order (13 F. R. 310), the allotments to Puerto

Rican refiners appear to be proper on the basis of the record of the hearing and the applicable provisions of the Sugar Act of 1948. Your petition does not afford a satisfactory basis for the relief requested and, accordingly, it is denied.

Sincerely yours,

/s/ CLINTON P. ANDERSON,
Secretary.

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Endorsement: United States Court of Appeals for the District of Columbia Filed Feb 11 1948.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Docket No. 9769.

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, *Appellants*,

v.

SECRETARY OF AGRICULTURE, *Appellee*.

Notice of Appeal and Petition for Review.

Notice is hereby given that the Central Roig Refining Company, a corporation duly organized and existing under the laws of Puerto Rico and having its principal place of business in Humacao, Puerto Rico, and the Western Sugar Refinery Company, a corporation duly organized under the laws of Puerto Rico and having its principal place of business in Mayaguez, Puerto Rico, the appellants above named, hereby appeal to the United States Court of Appeals for the District of Columbia from the decision of the Secretary of Agriculture in Puerto Rico Sugar Order 18 entitled "Decision and Order of the Secretary of Agriculture Allotting Direct Consumption Portion of 1948 Sugar Quota for Puerto Rico" (hereinafter referred to as "Order 18"), published in the Federal Register January 22, 1948 (13 F. R. 310-313) and effective when so published. Appellants petition for review of said decision and order by this Court.

Appellants respectfully show as follows:

I.—NATURE OF PROCEEDING AS TO WHICH REVIEW IS SOUGHT.

The Secretary of Agriculture (hereinafter referred to as the "Secretary"), purporting to act pursuant to section 205(a) of the Sugar Act of 1937 (50 Stat. 906), U. S. C., Title 7, § 1115(a), published in the Federal Register for December 6, 1947 (12 F. R. 8210-8211) a "Notice of Hearing on Proposed Allotment" of direct consumption portion of

1948 sugar quota for Puerto Rico to appellants and others, and thereafter on December 18 and 19, 1947, caused a hearing to be held pursuant to said Notice and subsequently purporting to act pursuant to section 205(a) of the Sugar Act of 1948 (Pub. 388, 80th Cong.), hereinafter referred to as the "Act," issued Order 18 making allotments to appellants and others. Appellants filed with the Secretary of Agriculture on February 5, 1948, their Petition for Stay and Reconsideration of Order which petition was denied on February 11th.

II.—Facts and Statutes Upon Which Jurisdiction is Based.

The appellants are allottees under Order 18, are aggrieved by reason of the decision therein of the Secretary granting the allotments made to them, and are entitled to appeal to this Court from said Order under section 205 of the Act and to petition this Court for judicial review of Order 18 under section 10 of the Administrative Procedure Act (60 Stat. 243), U. S. C., Title 5, § 1009. This Court has jurisdiction of the appeal from Order 18 and to review Order 18 under said sections of said Acts.

III.—Relief Prayed.

Appellants pray that this Court enter a judgment reversing the decision of the Secretary in Order 18 and holding unlawful and setting aside said Order.

IV.—Statement of Reasons for Appeal and Points on which Appellants Intend to Rely.

A. Order 18 is beyond the authority conferred on the Secretary by section 205(a) of the Act in that—

1. The decision making allotments takes into consideration a standard not permitted by section 205(a), namely restoration of prewar competitive conditions among the allottees.

2. The decision making allotments fails to take into consideration one of the three standards specified by section 205(a), namely, processings by the allottee of sugar to which proportionate shares pertained.

3. The decision making allotments is based on erroneous constructions and applications of the other two standards specified by section 205(a), namely, past marketings of the allottee, and the ability of the allottee to market the allotment made to him.

B. If Order 18 is within the authority conferred on the Secretary by section 205(a) of the Act, then said section is unconstitutional in that it authorizes discrimination between allottees that is so gross as to be contrary to the due process clause of the Fifth Amendment to the Constitution.

C. Order 18 is invalid since the Act, and more particularly section 205(a) and section 207(b), is in excess of the commerce power and is contrary to the due process clause of the Fifth Amendment as an arbitrary restriction of commerce with territory incorporated into the United States.

D. Order 18 is invalid in that certain findings therein of the Secretary, namely, Nos. 1, 4, 5, 6, 7, 8, and 9, are not supported by substantial evidence of record but are arbitrary and capricious.

/s/ FREDERIC P. LEE,
Attorney for Appellants, Central Roig Refining Company and Western Sugar Refinery Company.

Attorney's address:
1200 18th Street N. W.
Washington 6, D. C.

Service of the above Notice of Appeal and Petition for Review by receipt of a true copy thereof is acknowledged this 11th day of February, 1948.

/s/ CARROLL HUNTER,
Solicitor for Appellee.

Endorsement: United States Court of Appeals for the District of Columbia Filed Mar. 11, 1948.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

January Term, 1948.

Docket No. 9769.

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, *Appellants*,

v.

CLINTON P. ANDERSON, Secretary of Agriculture, *Appellee*.

Notice of Intention to Intervene and Verified Statement of the Porto Rican American Sugar Refinery, Inc., in Support Thereof.

The Porto Rican American Sugar Refinery, Inc. a corporation organized under the laws of Puerto Rico, with its principal place of business in Mercedita, Puerto Rico, hereinafter referred to as "Intervenor", hereby gives notice in accordance with sub-division (d) of Section 205 of the "Sugar Act of 1948", (Public Law 388—80th Congress, 1st session), of its intention to intervene and participate in the proceedings had upon the appeal of Central Roig Refining Company and Western Sugar Refinery Company, from the order and decision of Honorable Clinton P. Anderson, Secretary of Agriculture, effective January 22, 1948, whereby the direct-consumption portion of the 1948 sugar quota for Puerto Rico for marketing in Continental United States for the calendar year 1948, was allotted among the several persons interested (13 Federal Register 310-313).

The nature of intervenor's interest in this proceeding is as follows:

Intervenor is, and has for a period of twenty-two years past, been a refiner, shipper in interstate commerce and marketer in Continental United States of refined cane sugar

and in competition in said market with Central Roig Refining Company for approximately eleven years and with Western Sugar Refinery Company, for approximately ten years.

Intervenor was given notice by the Secretary of Agriculture and thereafter participated in a public hearing conducted by the Secretary of Agriculture at Washington, D. C. on December 18, 1947, for the purpose of receiving evidence from all persons interested to enable him "to make a fair, efficient, and equitable distribution of that portion of the 1948 sugar quota for Puerto Rico for consumption in the Continental United States which may be filled by direct-consumption sugar" among all persons entitled to market Puerto Rican direct-consumption sugar in Continental United States for the calendar year 1948.

Based upon the evidence received and the record made at such hearing, the Secretary of Agriculture did, on January 22, 1948, make his order and decision alloting and apportioning the quota hereinbefore referred to among the several persons interested including appellants and intervenor.

By its appeal, appellants seek a judgment and decision of this court modifying or reversing the order and decision of the Secretary.

By the order and decision complained of, intervenor received an allotment whereby it may ship in interstate commerce and market direct-consumption sugar in continental United States during the year 1948.

Intervenor will be aggrieved and its interests adversely affected by a reversal or modification of the Secretary's order in the particulars prayed for by Appellants.

The rights and interests of intervenor are directly involved in the above entitled appeal and proceedings to be had pursuant thereto.

Pursuant to sub-section (c) of Section 205 of the Sugar Act of 1948, the Secretary of Agriculture has mailed a copy of the Notice of Appeal and Petition for Review from said decision and order, effective January 22, 1948, allotting the

direct-consumption portion of 1948 sugar quota for Puerto Rico, to intervenor as a person shown by the records of the Secretary to be interested in such appeal and to have a right to intervene therein under the provisions of said section.

Dated March 8th, 1948.

PORTO RICAN AMERICAN SUGAR REFINERY, INC.,
Intervenor.

By: F. J. SERRALLÉS,
Director.

Mercedita, Puerto Rico.

ARTHUR L. QUINN,
1625 K Street, N.W.,
Washington, D. C.

GORDON P. PEYTON,
Shoreham Building,
Washington, D. C.

ORLANDO J. ANTONSANTI,
P. O. Box 829,
San Juan, Puerto Rico.
Attorneys for the Porto Rican American Sugar Refinery, Inc., Intervenor.

By: ARTHUR L. QUINN.

City of San Juan, Island of Puerto Rico, ss:

Felix Juan Serrallés, of lawful age, being first duly sworn upon oath deposes and says:

That he is one of the Directors of the Porto Rican American Sugar Refinery, Inc., the above named Intervenor and is authorized to make this verification on its behalf; that he has read the above and foregoing Notice of Intention to Intervene and Verified Statement of the Porto Rican American Sugar Refinery, Inc., that he knows the contents

thereof and that the matters and things therein set forth are true.

F. J. SERRALLÉS.

Affidavit No. 800

Sworn and subscribed to before me by Felix Juan Serralés, of legal age, married and a resident of Ponce, Puerto Rico, personally known to me, and known to be the person so subscribing, at San Juan, Puerto Rico, on this 8th day of March, 1948.

O. J. ANTONSANTI,
Notary Public.

(Seal)

My Commission runs indefinitely.

PROOF OF SERVICE.

Service and receipt of a true copy of the within Notice of Intention to Intervene and Verified Statement of the Porto Rican American Sugar Refinery, Inc. is hereby acknowledged this 11th day of March, 1948.

CLINTON P. ANDERSON,
Secretary of Agriculture.

By: W. CARROLL HUNTER,
Solicitor.

PROOF OF SERVICE.

Service and receipt of a true copy of the within Notice of Intention to Intervene and Verified Statement of the Porto Rican American Sugar Refinery, Inc. is hereby acknowledged this 11th day of March, 1948.

CENTRAL ROIG REFINING CO.,
WESTERN SUGAR REFINERY CO.,

By: FREDERIC P. LEE,
Their Attorney.

Endorsement: United States Court of Appeals for the District of Columbia Filed Mar. 12, 1948.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Docket No. 9769.

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, *Appellants*,

v.

SECRETARY OF AGRICULTURE, *Appellee*.

Notice of Intention to Intervene.

Notice is hereby given that, pursuant to Section 205 (d) of the Sugar Act of 1948 (Public Law 388, 80th Cong., 1st Sess., 7 U. S. C., Section 1115 (d)), The American Sugar Refining Company, Godchaux Sugars, Inc., Henderson Sugar Refinery, Inc., Imperial Sugar Company, Inland Sugar Company, The National Sugar Refining Company, Refined Syrups and Sugars Revere Sugar Refinery, Savannah Sugar Refining Corporation, and Western Sugar Refinery (hereinafter referred to as "Intervenors") intend to intervene in this proceeding. The Nature of the interest of the Intervenors appears from the statement attached hereto.

DEAN ACHESON,
Attorney for Intervenors,
701 Union Trust Building,
Washington 5, D. C.

Of Counsel:
COVINGTON, BURLING, RUBLEE, ACHESON & SHORB,
701 Union Trust Building,
Washington 5, D. C.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Docket No. 9769.

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, *Appellants*,

v.

SECRETARY OF AGRICULTURE, *Appellee*.

Statement of Interest.

Come now the Intervenors named in the foregoing Notice of Intention to Intervene and file this statement of the nature of their respective interests:

1. The American Sugar Refining Company is a corporation organized and existing under the laws of the State of New Jersey, and having its principal office in New York, New York.

Godchaux Sugars, Inc. is a corporation organized and existing under the laws of the State of New York and having its principal office in New Orleans, Louisiana.

Henderson Sugar Refinery, Inc. is a corporation organized and existing under the laws of the State of Louisiana and having its principal office in New Orleans, Louisiana.

Imperial Sugar Company is a corporation organized and existing under the laws of the State of Texas and having its principal office in Galveston, Texas.

Inland Sugar Company is a corporation organized and existing under the laws of the State of Delaware and having its principal office in Milwaukee, Wisconsin.

The National Sugar Refining Company is a corporation organized and existing under the laws of the State of New Jersey and having its principal office in New York, New York.

Refined Syrups and Sugars, Inc. is a corporation organized and existing under the laws of the State of New York and having its principal office in Yonkers, New York.

Revere Sugar Refinery is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal office in Charlestown, Massachusetts.

Savannah Sugar Refining Corporation is a corporation organized and existing under the laws of the State of New York and having its principal office in Savannah, Georgia.

Western Sugar Refinery is the cane sugar refining department of J. D. & A. B. Spreckels Company, a corporation organized and existing under the laws of the State of California and having its principal office in San Francisco, California.

2. Each of the corporations above named (hereinafter collectively referred to as the Intervenors) owns one or more cane sugar refineries in the continental United States, and is engaged in refining and marketing cane sugar in the continental United States. The Intervenors as a group distribute approximately 80% of all cane sugar refined in the United States and approximately 60% of all refined sugar distributed for consumption in the United States.

3. The Notice of Appeal and Petition for Review filed by Appellants herein attacks the validity of Puerto Rico Sugar Order 18, issued by the Secretary of Agriculture under the Sugar Act of 1948 (Public Law 388, 80th Cong., 1st Sess., 7 U. S. C., Sections 1101-60), hereinafter sometimes called the Sugar Act, upon two grounds. The first is that the allotments made by the Secretary of Agriculture in said Order 18 are unlawful because based upon erroneous findings of fact and upon improper application of the standards prescribed in Section 205 (a) of the Act. Intervenors claim no interest in this aspect of the appeal.

4. The second ground of attack upon Order 18 is that the Sugar Act, and particularly Sections 205 (a) and 207 (b) thereof, are unconstitutional because in excess of the commerce power of the Federal Government and contrary to the due process clause of the Fifth Amendment. Inter-

venors are interested parties and would be adversely affected by a reversal of Order 18 upon the ground that the Sugar Act, and particularly Section 207 (b) thereof, is unconstitutional.

5. Like its predecessors, the Jones-Costigan Sugar Act of 1934 and the Sugar Act of 1937, the Sugar Act of 1948 has as its primary objective the stabilization of the sugar producing, refining and importing industries. In administering the Sugar Act the Secretary of Agriculture is subject to the overall mandate of protecting the welfare of consumers and of those engaged in the domestic sugar industry by assuring a supply of sugar at prices which will not be excessive to consumers and which will fairly and equitably maintain and protect the sugar industry of the United States (H. R. Rep. No. 796, 80th Cong., 1st Sess., 1, 2 (1947)).

6. To effectuate these purposes, the Sugar Act directs the Secretary of Agriculture to determine for each calendar year, in accordance with certain standards and subject to periodic revision, the amount of sugar needed to meet the requirements of consumers in the continental United States (Sugar Act, Sect. 201). Acting pursuant to this direction the Secretary has determined the requirements for the calendar year 1948 as 7,500,000 short tons, raw value (13 Federal Register 131, 1145).

7. When a determination is made, as set forth in the preceding paragraph, the Secretary is directed to establish or revise quotas for the sugar producing areas specified in the Act (Sugar Act, Sect. 202). The basic quotas established by the Act, and the actual 1948 quotas in short tons, raw value, as most recently revised by the Secretary, are as follows:

Production Area	Basic Quota	1948 Quota
Domestic Beet Sugar	1,800,000	1,847,738
Mainland Cane Sugar	500,000	513,260
Hawaii	1,052,000	900,000
Puerto Rico	910,000	934,134
Virgin Islands	6,000	6,159
Philippines	952,000	290,000
Cuba		2,943,509
Other foreign countries (Balance of requirement, of which Cuba is entitled to 98.64%)		63,700
Unallotted		1,500
Total		7,500,000

8. Under Section 209 of the Sugar Act it is unlawful for any person to import into the continental United States, or to ship, transport or market in interstate commerce, or in competition with sugar shipped, transported or marketed in interstate or foreign commerce, any sugar after the applicable quota has been filled. Supplies of raw sugar to maintain production of domestic cane sugar refineries operated by the Intervenors must be obtained within the established quotas for the respective producing areas. For many years the greater part of the raw sugar requirements of domestic cane sugar refiners have been obtained from sources outside the continental United States.

9. Under the quota system established by the Sugar Act, if the quotas of producing areas outside the continental United States were filled by imports of refined sugar rather than raw sugar, the domestic cane sugar refiners would be without adequate sources of raw sugar to maintain production. To effectuate the purpose of the Sugar Act to "fairly and equitably maintain and protect the welfare of the domestic sugar industry", Section 207 thereof provides that not more than specified numbers of short tons, raw value, of the quotas of areas outside the continental United States may be filled by refined sugar. The refined sugar quota for Puerto Rico is set at 126,033 short tons raw value

(Sugar Act, Sect. 207 (b)) leaving a balance of 808,101 such tons from its 1948 quota available to fill the needs of domestic cane sugar refiners, including the Intervenors.

10. Puerto Rico has sugar refining capacity far in excess of local Puerto Rican requirements and the Puerto Rican refined quota of 126,033 short tons, raw value. Offshore sugar refining has the advantage over continental refining of the low wages prevailing outside the United States. In the past, offshore sugar refining has been rapidly increased when profitable opportunity was offered, and it could and would be rapidly increased if Section 207 of the Sugar Act were held unconstitutional. In the event of such a holding, United States refiners, including the Intervenors, would immediately lose a large part, and within a short period substantially all, of the Puerto Rican raw sugar upon which they rely to maintain production. Under the established quotas total supplies of raw cane sugar available to United States refiners are approximately 5,000,000 short tons, raw value, and loss of the Puerto Rican raw sugar which could not be made up from other areas by reason of the quotas, would amount to more than 15% of the total supply.

11. United States sugar refiners, including the Intervenors, have for many years been operating at a rate substantially below capacity. Curtailment of operations by an additional 15% would seriously and adversely affect the interests of United States refiners, including the Intervenors, not only by the direct loss of production, but also by the loss of economies flowing from volume operation.

DEAN ACHESON,
Attorney for Intervenors,
701 Union Trust Building,
Washington 5, D. C.

Of Counsel:
COVINGTON, BURLING, RUBLEE, ACHESON & SHORB,
701 Union Trust Building,
Washington 5, D. C.

District of Columbia, ss:

Dean Acheson, being duly sworn, deposes and says:

That he is the attorney for the Intervenors named in the foregoing Statement of Interest, duly authorized by each of them to verify said statement; that he has read said statement and knows the contents thereof; and that he verily believes the facts stated therein to be true.

DEAN ACHESON.

Subscribed and sworn to before me this 12th day of March, 1948.

MARGARET MACPHERSON,
Notary Public.

(Seal)

Service of the above Notice of Intention to Intervene and Statement of Interest by receipt of true copies thereof is acknowledged this 12th day of March, 1948.

FREDERIC P. LEE,
Attorney for Appellants.

W. CARROLL HUNTER,
Solicitor, Dept. of Agriculture
Attorney for Appellee.

ARTHUR L. QUINN,
Attorney, Porto Rico American Sugar Refinery, Inc.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9769

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, APPELLANTS

v.

SECRETARY OF AGRICULTURE, APPELLEE

PORTO RICAN AMERICAN SUGAR REFINERY, INC., INTERVENOR

THE AMERICAN SUGAR REFINING COMPANY, ET AL., INTERVENORS

GOVERNMENT OF PUERTO RICO, INTERVENOR

On appeal from an order of the Secretary of Agriculture

Argued October 6, 1948 Decided November 24, 1948

United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 24, 1948. Joseph W. Stewart, Clerk.

Mr. Frederic P. Lee for appellants.

Mr. James A. Doyle, Associate Solicitor, Department of Agriculture, of the Bar of the Supreme Court of Nebraska, *pro hac vice* by special leave of court, with whom *Messrs. George Morris Fay*, United States Attorney, and *J. Stephen Doyle, Jr.*, Special Assistant to the Attorney General, were on the brief for appellee. *Messrs. Sidney S. Sachs* and *John D. Lane*, Assistant United States Attorneys, also entered appearances for appellee.

Messrs. Arthur L. Quinn and *Orlando J. Antonsanti*, with whom *Mr. Gordon P. Peyton* was on the brief, for intervenor Porto Rican American Sugar Refinery, Inc., urging affirmance. *Mr. Dean G. Acheson*, with whom *Mr. Donald Hiss* was on the brief, for intervenors American Sugar Refining Company, *et al.*, urging affirmance.

Mr. Walton Hamilton, with whom *Mr. Thurman Arnold* was on the brief, for intervenor Government of Puerto Rico, urging reversal. *Mr. Abe Fortas* also entered an appearance for intervenor Government of Puerto Rico.

Before EDGERTON, CLARK, and WILBUR K. MILLER, JJ.

EDGERTON, J.: Section 207 (b) of the Sugar Act of 1948 provides that "Not more than one hundred and twenty-six thousand and

thirty-three short tons, raw value, of the quota for Puerto Rico for any calendar year may be filled by direct-consumption sugar." 61 Stat. 922, 927. "The quota for Puerto Rico" means the quantity of sugar that may be imported into continental United States from Puerto Rico. "Direct-consumption sugar" means, approximately, refined sugar.

Section 205 (a) of the Act provides that whenever the Secretary of Agriculture "finds that the allotment of any quota, or proration thereof, . . . is necessary to . . . prevent disorderly marketing . . . or to afford all interested persons an equitable opportunity to market sugar . . . he shall [allot] to persons who market or import sugar . . . the quantities . . . which each such person may market in continental United States . . . for consumption therein. Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota . . ., by taking into consideration the processings of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained;[1] the past marketings or importations of each such person; and the ability of such person to market or import that portion of such quota . . . allotted to him." If, then, allotments are made at all, they "shall be made . . . by taking into consideration" three factors or standards: (1) processings of "proportionate shares" sugar, (2) "past marketings," and (3) "ability . . . to market."

Much more direct-consumption sugar is on the market in Puerto Rico than the 126,033 tons that § 207 (b) permits to be imported into the United States. In Puerto Rico Sugar Order 18, 13 Fed. Reg. 310, 313, the Secretary concluded "(1) that the allotment of the direct-consumption portion of the 1948 sugar quota for Puerto Rico is necessary to prevent disorderly marketing of such sugar and to afford all interested persons an equitable opportunity to market such sugar in the continental United States; (2) that in order to make a fair, efficient, and equitable distribution of the direct-consumption portion of such quota, as required by section 205 (a) of the act, allotments should be made by giving equal weight to (a) past marketings, measured by the average of the highest five years of such marketings by each refiner during the period 1935–1941, inclusive, and (b) ability to market, measured by the highest single year's marketings during the period 1935–47, inclusive." The order allots direct-consumption sugar, among refiners operating in Puerto Rico, in accordance with these views.

[1] This means sugar from sugar beets or sugarcane not exceeding the producing farm's proportionate share of the quantity required to be processed to enable the producing area to meet its quota. § 301 (b).

The appellants, two refineries operating in Puerto Rico, bring the order here on appeal under § 205 of the Act. They contend that the order discriminates against them in violation of the Act and of the Constitution. They attack the constitutionality of § 207 (b) and the alleged compliance of the order with § 205 (a). Porto Rican American Sugar Refinery, Inc., to which the order is very favorable, intervenes in its support. The Government of Puerto Rico intervenes to attack the constitutionality of § 207 (b). The American Sugar Refining Company and other mainland refiners intervene to defend its constitutionality.

Though the order purports to give effect to "ability to market" we think it fails to do so. The Secretary argues that "in fairness to those refiners on whom the impact of war was greatest, it is considered fair and reasonable to select a prewar year as a proper measure of their ability. Therefore, the best single year's performance during the past 13 years is deemed to afford a fair and equitable measure of the ability of each refiner to market direct-consumption sugar." We cannot follow this argument. Performance in the 12 years before 1947 has nothing to do with ability to market in 1948. The Secretary's argument undertakes to equate each refiner's ability to market with the right to market that the Secretary thinks the refiner ought, as a matter of fairness, to have. By requiring the Secretary to take into consideration ability to market, Congress foreclosed the question whether wartime dislocations made it unfair to do so. Actual performance may be, as the order says, a better measure of ability to market than plant capacity. But since the ability to be measured is current ability, if performance is to be the measure it must be current performance.

We think the order also fails to give effect to "past marketings." "Past marketings," as that term is used in the Act, plainly includes marketings within the last half-dozen years or at least the more recent of them.[2] It is doubtful whether the term includes anything else. As of 1948, the average of the highest five years during the period 1935–1941 is, in our opinion, no measure of "past marketings." In excluding the six years 1942–1947 the order fails to comply with the Act.

The order does not even purport to give effect to "processings . . . to which proportionate shares . . . pertained." The Secretary thought this standard "not applicable" for the following reasons. In his opinion the processings to which it refers are processings of sugarcane into raw sugar and do not include the proc-

[2] *Cf.* "There is no merit in the contention that restricting consideration of past marketings to the preceding four years arbitrarily discriminated against those whose marketing experience antedated that period." *Gay Union Corp. v. Wallace*, 71 App. D. C. 382, 388, 112 F. 2d 192, 198, *cert. denied*, 310 U. S. 647.

essing of raw into refined sugar.[3] Raw sugar "must be refined to produce what is commonly referred to as direct-consumption sugar. The three largest refiners in Puerto Rico (Puerto Rican American, Roig, and Igualdad) do not process raw sugar from sugarcane, but instead obtain their raw supplies from affiliated mills or from completely independent sources . . ."[4] No doubt facts of this sort may be considered in determining how much weight should be given to processings of proportionate-shares sugar. In our opinion they cannot justify refusal to give this standard any weight at all. If § 205 (a) merely directed the Secretary, in making allotments, to give consideration to the several standards, his view that he need not give weight to all of them might perhaps be tenable. But it directs him to make allotments *by* taking into consideration the several standards. In our opinion this cannot be done without giving some effect to each. Any possible doubt as to the intention of Congress in this respect seems to us to be removed by the fact that in the Sugar Act of 1948 Congress changed the word "or"[5] to "and," after this court had expressly held that the word "or" in the 1937 act justified the Secretary in denying effect to one of the three standards.[6]

We take these to be "questions of law" concerning which the Sugar Act requires us to review the Secretary's order. We must therefore reverse it and remand the case to him. A majority of the court are of opinion that since the order is not authorized by the Act we cannot, within established principles of review, undertake to decide whether § 207 (b) of the Act is authorized by the Constitution. All agree that this question has been fully argued, and my own view is that we should decide it.

Reversed.

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[3] This construction is certainly a legitimate one but is not, we think, the only possible one.

[4] The Secretary added: "Furthermore, the use of this standard would make all of the raw sugar mills in Puerto Rico eligible for an allotment of direct-consumption sugar, although the great majority of these mills do not make refined sugar which constitutes the bulk of the Puerto Rican direct-consumption sugar." We think this erroneous. Section 205 (a) provides for allotments "to persons who market or import sugar"; meaning, evidently, persons who market or import the sort of sugar that is to be allotted. No allotment need be made to other persons.

[5] Before "the ability of such person to market . . ." 50 Stat. 906.

[6] *Gay Union Corp.* v. *Wallace*, *supra* note 2.

United States Court of Appeals for the District of Columbia Circuit

October Term, 1948

No. 9769

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, APPELLANTS

v.

SECRETARY OF AGRICULTURE, APPELLEE

PORTO RICAN AMERICAN SUGAR REFINERY, INC., THE AMERICAN SUGAR REFINING COMPANY ET AL., GOVERNMENT OF PUERTO RICO, INTERVENORS

On Appeal from an Order of the Secretary of Agriculture

United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 24, 1948. Joseph W. Stewart, Clerk.

Before EDGERTON, CLARK AND WILBUR K. MILLER, JJ.

Judgment

This cause come on to be heard on the transcript of the record from the Secretary of Agriculture, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the Secretary of Agriculture appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the Secretary of Agriculture for further proceedings not inconsistent with the opinion of this Court.

Per Circuit Judge EDGERTON.

Dated November 24, 1948.

United States Court of Appeals for the District of Columbia Circuit

United States Court of Appeals for the District of Columbia Circuit. Filed Dec. 9, 1948. Joseph W. Stewart, Clerk.

No. 9769

CENTRAL ROIG REFINING CO. AND WESTERN SUGAR REFINING COMPANY, APPELLANT

v.

SECRETARY OF AGRICULTURE, APPELLEE

Motion to stay mandate

Comes now the appellee by his attorney, the United States Attorney, and moves that the mandate in the above-entitled case be stayed for 30 days pending application to the Supreme Court of the United States for a Writ of Certiorari.

(S) George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney.

(S) John D. Lane,
JOHN D. LANE,
Assistant United States Attorney.

Certificate of service

I certify that service of the foregoing Motion has been made upon appellant by mailing a copy thereof to their attorneys, addressed as follows; Abe Fortas and Thurman Arnold at the Ring Building, Washington, D. C.; Walton H. Hamilton at 1200 18th Street, NW., Washington, D. C.; Arthur L. Quinn at 1625 K Street, NW., Washington, D. C.; and Dean Acheson at 701 Union Trust Building, Washington, D. C.; and upon appellant's attorneys Orlando J. Antonsanti at P. O. Box 829 San Juan, Porto Rico and Frederic P. Lee at 1200 18th Street, NW., Washington, D. C.

(S) John D. Lane,
JOHN D. LANE,
Assistant United States Attorney.

DECEMBER 9, 1948.

United States Court of Appeals for the District of Columbia Circuit

October Term, 1948

United States Court of Appeals for the District of Columbia Circuit. Filed Dec. 22, 1948. Joseph W. Stewart, Clerk.

No. 9769

CENTRAL ROIG REFINING CO. AND WESTERN SUGAR REFINING COMPANY, APPELLANTS

v.

SECRETARY OF AGRICULTURE, APPELLEE

Order

On consideration of appellee's motion to stay the issuance of certified copy of the opinion and judgment herein for 30 days pending application to the Supreme Court for allowance of a writ of certiorari, It is

Ordered by the Court that the issuance of a certified copy of the opinion and judgment herein be, and it is hereby, stated to and including December 24, 1948.

Per curiam.

Dated: December 22, 1948.

United States Court of Appeals for the District of Columbia Circuit

United States Court of Appeals for the District of Columbia Circuit. Filed Dec. 23, 1948. Joseph W. Stewart, Clerk.

No. 9769

CENTRAL ROIG REFINING CO. AND WESTERN SUGAR REFINING COMPANY, APPELLANTS

v.

SECRETARY OF AGRICULTURE, APPELLEE

Motion for further stay of issuance of certified copy of opinion and judgment

Comes now the appellee by his attorney, the United States Attorney, and moves for a stay of the issuance of a certified copy of the Court's opinion and judgment, presently stayed to and including December 24, 1948, to and including January 24, 1949,

for the reason that the appellee is considering a petition to the Supreme Court of the United States for a Writ of certiorari.

(s) George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney.

(s) John D. Lane
JOHN D. LANE,
Assistant United States Attorney.

Certificate of service

I certify that service of the foregoing Motion has been made upon the appellant and intervenors by mailing a copy to their respective attorneys, this 23d days of December 1948, addressed as follows: Abe Fortas and Thurman Arnold, Ring Building, Washington, D. C.; Walton H. Hamilton, 1200 18th Street NW., Washington, D. C.; Arthur L. Quinn, 1625 K Street NW., Washington, D. C.; Dean Acheson, 701 Union Trust Building, Washington, D. C.; Orlando J. Antonsanti, P. O. Box 829, San Juan, Porto Rico; and Frederic P. Lee, 1200 18th Street NW., Washington, D. C.

(s) John D. Lane,
JOHN D. LANE,
Assistant United States Attorney.

United States Court of Appeals for the District of Columbia Circuit

January Term, 1949

No. 9769

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, APPELLANT

v.

SECRETARY OF AGRICULTURE, APPELLEE

United States Court of Appeals for the District of Columbia Circuit. Filed Jan. 7, 1949. Joseph W. Stewart, Clerk.

Order

Upon consideration of appellee's motion for a further stay of issuance of the certified copy of the Court's opinion and judgment, presently stayed to and including December 24, 1948, to January 24, 1949, it is

Ordered by the Court that the Motion be, and is hereby, granted.
Per curiam.
Enter.

(S) STEPHENS, C. J.

DATED: JANUARY 7, 1949.

United States Court of Appeals for the District Court of Columbia Circuit

No. 9769

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, APPELLANT

v.

SECRETARY OF AGRICULTURE, APPELLEE

United States Court of Appeals for the District of Columbia Circuit. Filed Jan. 19, 1949. Joseph W. Stewart, Clerk.

Motion for further stay of issuance of certified copy of opinion and judgment

Comes now the appellee by his attorney, the United States Attorney, and moves for a stay of the issuance of a certified copy of the Court's opinion and judgment, presently stayed to and including January 24, 1949, to and including February 23, 1949, for the reason that the appellee is considering a petition to the Supreme Court of the United States for a Writ of Certiorari.

(S) George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney.
(S) John D. Lane,
JOHN D. LANE,
Assistant United States Attorney.

Certificate of service

I certify that service of the foregoing motion has been made upon the appellant and interveners by mailing a copy to their respective attorneys, this 19th day of January, 1949, addressed as follows: Abe Fortas and Thurman Arnold, Ring Building, Washington, D. C.; Walton H. Hamilton, 1200 18th Street NW., Washington, D. C.; Arthur L. Quinn, 1625 K Street NW., Washington, D. C.; Dean Acheson, 701 Union Trust Building, Washington, D. C.;

Orlando J. Antonsanti, P. O. Box 829, San Juan, Porto Rico; and Frederic P. Lee, 1200 18th Street NW., Washington, D. C.

(S) John D. Lane,
JOHN D. LANE,
Assistant United States Attorney.

United States Court of Appeals for the District of Columbia Circuit

January Term, 1949

No. 9769

CENTRAL ROIG REFINING CO. AND WESTERN SUGAR REFINING COMPANY, APPELLANTS

v.

SECRETARY OF AGRICULTURE, APPELLEE

Order

On consideration of appellee's motion to stay the issuance of certified copy of the opinion and judgment herein for 30 days pending application to the Supreme Court for allowance of a writ of certiorari, It is

Ordered by the Court that the issuance of a certified copy of the opinion and judgment herein be, and it is hereby, stayed to and including February 23, 1949.

Per curiam.

Enter.

(S) STEPHENS, C. J.

Dated February 4, 1949.

United States Court of Appeals for the District of Columbia Circuit. Filed Feb. 4, 1949. Joseph W. Stewart, Clerk.

In the United States Court of Appeals for the District of Columbia Circuit

No. 9769

CENTRAL ROIG REFINING CO. AND WESTERN SUGAR REFINING COMPANY, APPELLANTS

v.

SECRETARY OF AGRICULTURE, APPELLEE

PUERTO RICAN AMERICAN SUGAR REFINERY, INC., INTERVENOR

THE AMERICAN SUGAR REFINING COMPANY, ET AL., INTERVENORS

GOVERNMENT OF PUERTO RICO, INTERVENOR

United States Court of Appeals for the District of Columbia Circuit. Filed Feb. 7, 1949. Joseph W. Stewart, Clerk.

Designation of record

The Clerk will please prepare a certified transcript of record for use on petition for writ of certiorari to the Supreme Court of the United States in the above-entitled cause, and include therein the following:

1. Joint Appendix to Appellants' Brief.
2. Opinion filed November 24, 1948.
3. Judgment.
4. Motion to Stay Mandate, filed December 9, 1948.
5. Order Staying Issuance of Certified Copy of Court's Opinion and Judgment to and including December 24, 1948.
6. Motion for Further Stay of Issuance of Certified Copy of Opinion and Judgment to and including January 24, 1949, filed December 23, 1948.
7. Order entered January 7, 1949 granting motion.
8. Motion for Further Stay of Issuance of Certified Copy of Opinion and Judgment to and including February 23, 1949.
9. Order.
10. This Designation
11. Clerk's Certificate.

(S) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General,
Counsel for Appellee.

(S) Frederic P. Lee,
FREDERIC P. LEE,
Counsel for Appellants.

(S) Arthur L. Quinn,
ARTHUR L. QUINN,
Counsel for Intervenor,
Puerto Rican American Sugar Refinery, Inc.

(S) COVINGTON, BURLING, RUBLEE,
ACHESON & SHORB,
by H. C. WESTWOOD,
COVINGTON, BURLING, RUBLEE,
ACHESON & SHORB,
Counsel for Intervenors,
The American Sugar Refining Company, et al.

(S) ABE FORTAS,
ARNOLD, FORTAS & PORTER,
Counsel for Intervenor,
Government of Puerto Rico.

Dated February 8, 1949.

United States Court of Appeals for the District of Columbia Circuit

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, formerly United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered 1 to 206, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and the proceedings of the said Court of Appeals as designated by counsel in the case of: Central Roig Refining Company and Western Sugar Refining Company, Appellants, v. Secretary of Agriculture, Appellee, Porto Rican American Sugar Refinery, Inc., Intervenor; The American Sugar Refining Company, et al., Intervenors; Government of Puerto Rico, Intervenor; No. 9769, January Term, 1949, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this eighth day of February, A. D. 1949.

[SEAL] (S) JOSEPH W. STEWART,
Clerk of the United States Court of Appeals
for the District of Columbia Circuit.

In the Supreme Court of the United States

October Term, 1948

No. ——

SECRETARY OF AGRICULTURE, PETITIONER

v.

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, RESPONDENTS

PUERTO RICAN AMERICAN SUGAR REFINERY, INC., INTERVENOR

THE AMERICAN SUGAR REFINING COMPANY, ET AL., INTERVENORS

GOVERNMENT OF PUERTO RICO, INTERVENOR

Stipulation

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that:

1. For the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record shall consist of the following:

(a) Joint Appendix to Appellants' Brief.

(b) The proceedings had before the United States Court of Appeals for the District of Columbia Circuit as set forth in the Designation of Record filed by the Petitioner.

2. Petitioner will cause the Clerk of the United States Court of Appeals for the District of Columbia Circuit to file with the Clerk of the United States Supreme Court the entire transcript of record in the United States Court of Appeals for the District of Columbia Circuit, and any of the parties may refer in their briefs and arguments to said transcript of record, including any part which has not been printed.

(S) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.

(S) Frederic P. Lee,
FREDERIC P. LEE,
Counsel for Respondents.

(S) Arthur L. Quinn,
ARTHUR L. QUINN,
Counsel for Intervenor,
Puerto Rican American Sugar Refinery, Inc.

(S) COVINGTON, BURLING, RUBLEE,
ACHESON & SHORB,
by H. C. WESTWOOD,
COVINGTON, BURLING, RUBLEE,
ACHESON & SHORB,
Counsel for Intervenors,
The American Sugar Refining Company, et al.

(S) ABE FORTAS,
ARNOLD, FORTAS & PORTER,
Counsel for Intervenor,
Government of Puerto Rico.

U. S. GOVERNMENT PRINTING OFFICE: 1949

Supreme Court of the United States

No. 27—October Term, 1949

Order allowing certiorari

Filed April 25, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 580, Porto Rican American Sugar Refinery, Inc. vs. Central Roig Refining Co., for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 30—October Term, 1949

Order allowing certiorari

Filed April 25, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 575, Secretary of Agriculture vs. Central Roig Refining Co., for argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 32—October Term, 1949

Order allowing certiorari

Filed April 25, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket and assigned for argument immediately following Nos. 575 and 580, Secretary of Agriculture vs. Central Roig Refining Company, etc.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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U. S. GOVERNMENT PRINTING OFFICE: 1949